TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903

No. 77.

JULES S. BACHE, APPELLANT,

vs.

SAMUEL HUNT, AS RECEIVER OF THE ST. LOUIS, TOLEDO AND KANSAS CITY RAILROAD COMPANY, AND TOLEDO, ST. LOUIS AND WESTERN RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED DECEMBER 28, 1903.

(16,765.)

16507

(18,765.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 537.

JULES S. BACHE, APPELLANT,

vs.

SAMUEL HUNT, AS RECEIVER OF THE ST. LOUIS, TOLEDO AND KANSAS CITY RAILROAD COMPANY, AND TOLEDO, ST. LOUIS AND WESTERN RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

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a Supreme Court of the United States.

CONTINENTAL TRUST CO. ET AL.
vs.
TOLEDO, ST. LOUIS & KANSAS CITY RAILROAD CO. ET AL. } No. —.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis & Kansas City Railroad Company.

Transcript of Record.

Appeal from the circuit court of the United States for the northern district of Ohio, western division.

Spiegelberg & Wise, 44 Broad street, New York city, N. Y., solicitors for Jules S. Bache, appellant.

Butler, Notman, Joline & Mynderse, 54 Wall street, New York city, N. Y.,

Clarence Brown, Esq., Toledo, Ohio, solicitors for The Toledo, St. Louis & Western Railroad Company, appellee.

1 THE UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division, } *ss:*

Record of the proceedings of the circuit court of the United States within and for the western division of the northern district of Ohio in the cause and matter hereinafter stated, the same being finally disposed of at a regular term of said court begun and held at the city of Toledo, in said district, on the first Tuesday in December, being the second day of said month, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States of America the 127th, to wit, on the 4th day of December, A. D. 1902.

Present: The Honorable Francis J. Wing, United States district judge.

CONTINENTAL TRUST COMPANY OF THE City of New York, etc., Complainant,
vs.
TOLEDO, ST. LOUIS AND KANSAS CITY Railroad Company *et al.*, Respondents. } No. 1205. In Equity.

CHARLES HAMLIN ET AL., Cross-complainants,
vs.
CONTINENTAL TRUST COMPANY OF THE City of New York; Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, Cross-respondents. } Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, A. D. 1900.

The above-entitled original action was commenced on the 13th day of December, A. D. 1893, and the petition of Samuel Hunt, as

receiver was filed in said cause on the 28th day of May, 1900, and proceeded to final disposition at the term and day above written, and during the progress thereof pleadings and papers were filed, and orders of the court were made and entered in the order and on the dates hereinafter stated, to wit:

2 In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant,
vs.
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents. } No. 1205. In Equity.

CHARLES HAMLIN ET AL., Cross-complainants,
vs.
CONTINENTAL TRUST COMPANY OF THE CITY o New York; Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, Cross-respondents. } Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company.

To the circuit court of the United States for the northern district of Ohio, western division:

The petition of Samuel Hunt, as receiver of the property of the respondent, Toledo, St. Louis and Kansas City Railroad Company, duly appointed in the above-entitled cause, respectfully shows as follows:

First. Prior to 1886, the Toledo, Cincinnati and St. Louis Railroad Company a consolidated corporation under the laws of Ohio, Indiana and Illinois owned and operated a narrow-*guage* line of railway extending from Toledo, Ohio to East St. Louis, Illinois. The road consisted of two divisions; the Toledo division, extending from said Toledo, to Kokomo, Indiana, and the St. Louis division extending from said Kokomo to said East St. Louis. Each division was subject to divisional mortgages. Default having been made in the conditions of the divisional mortgages, proper actions were instituted for the foreclosure of these mortgages, and on December 30th, 1885, the Toledo division was sold to Sylvester H. Kneeland under decrees entered in the circuit court of the United States for the district of Indiana, the court of primary jurisdiction, and in the circuit court of the United States, for the northern district of Ohio, foreclosing the first mortgage thereon made by the Toledo, Delphos and Burlington Railway Company, one of the constituent companies of said Toledo, Cincinnati and St. Louis Railroad Company, and on the same day, the St. Louis

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division was also sold to said Kneeland under decrees entered in the circuit court of the United States for the district of Indiana, the court of primary jurisdiction, and in the circuit court of the United States for the southern district of Illinois foreclosing mortgages thereon made by the Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois, another of said constituent companies.

After finding that the mortgage thereby foreclosed constituted a paramount lien on the property embraced therein, subject only to such court and receiver's indebtedness as had theretofore been or might thereafter be decreed to be prior in equity to the lien of said mortgage and after the usual provisions for the sale of the mortgaged railroad at not less than the upset price fixed by such decree, a specified portion whereof was to be paid in cash, each decree provided that within twenty days from and after the confirmation of the sale thereunder, the purchaser should pay of the unpaid purchase-money for which said mortgaged property was sold, a sum sufficient, taken with the cash payment to be made at the time of sale, to pay and discharge the court costs, the master's fees, solicitors' fees, counsel fees and the claims and debts, including the taxes legally due upon the mortgaged property, that should have been then and prior thereto found and determined, and finally adjudged and decreed to be due and payable as court and receiver's indebtedness, and to be prior and superior in equity to the lien of the mortgage thereby foreclosed, excepting such final decrees upon said claims and debts as might have been superseded by proper appeal and supersedeas bonds, and, upon such payment by such purchaser, such purchaser should be let into the possession use and enjoyment of said rail-
4 road and property purchased at said sale, subject to the stipulations thereinafter set forth, that, upon confirmation of the sale made under said decree and payment within twenty days thereafter of such part of the purchase-money as might be required fully to comply with said provisions of said decree, the masters named therein should deliver to such purchaser a deed of conveyance of the mortgaged railroad and property; that said deed should contain an express stipulation reserving to the court, and the court reserved, full power and jurisdiction over said mortgaged property, with full authority and power, upon default of the purchaser in complying with each and every of the requirements of said decree respecting payment of the purchase-money, to retake possession of said railroad and property, and forthwith sell the same, or any part thereof, on order of the court to that effect entered; that said deed should contain the further stipulation that the purchaser and his assigns should forthwith yield possession of said railroad and property upon such order of the court entered upon such default of the purchaser in the payment of purchase-money as by the order of the court required, and that, upon delivery of said deed by the masters to such purchaser such purchaser should be let into possession of the mortgaged property.

Each of said decrees further provided that the residue of the pur-

chase-money not required to make the payments above stated should be paid by the purchaser from time to time upon the amounts found and determined, and finally adjudged by the court to be due and payable upon court and receiver's indebtedness, and to be prior and superior to the lien of the mortgage thereby foreclosed, said payments to be made by the purchaser upon twenty days' notice by the masters, upon the order of the court to that effect entered requiring such payment, until the entire purchase-money should be exhausted, if it should require the entire purchase-money to pay and discharge said court and receiver's indebtedness, and that, if any surplus be left after the payment of the court and receiver's indebtedness, the same should be distributed *pro rata* upon the coupons and bonds of said mortgage until the same should be fully paid; that in making payment of any order or decree decreeing any specified sum to be due and payable upon any claim or debt adjudged due and payable as part of the court and receiver's indebtedness against said property, the purchaser should have the right to pay said decree by furnishing to the masters evidence that such purchaser was the owner of such claim or debt, and had authority to enter the same satisfied and discharged.

It was also provided that the purchaser or purchasers at the foreclosure sale reserved the right to appeal from any order or final decree made by the court decreeing the payment of claims adjudged to be due and payable as court and receiver's indebtedness, and to be prior and superior in equity to the mortgage in suit.

Said sales were duly confirmed on February 5, 1886, and thereafter and on March 10, 1886, by order of the said circuit court for the district of Indiana, entered on that day, the form of the proposed master's deed was approved and its delivery directed.

The order further provided that said deed be confirmed and delivered, with the express understanding that the court have and retain full power and authority to retake possession of said property, or any part thereof, if the said grantee fail to pay the full purchase-money according to the terms of the decrees of sale, and that, in case any appeal be taken from any decree for the payment of money by said grantee and supersedeas bond be given, the amount secured by such bond should be considered as a part of the purchase-money, to enforce the payment of which the court might retake the property or any part thereof.

Pursuant to said order and on said March 10, 1886, a master's deed of the property was delivered to the purchaser. Said deed contained the following clause:

"It is hereby stipulated that the court shall have and hereby does reserve full power and jurisdiction upon default of the said Sylvester H. Kneeland, to comply with any order of the court respecting payment of the purchase-money, to retake possession of said property, and forthwith sell the same or any part thereof upon order by the court to that effect entered; and the said grantee further stipulates that he and his assigns will forthwith yield possession of said railroad and property upon such order of the court entered on his default in the payment of the purchase-money

or any part thereof, as required by said decrees; and further that all money becoming due on appeals to the supreme court shall be deemed to be purchase-money, notwithstanding said decrees may have been superseded pending such appeal."

Second. Pending said foreclosure, an agreement of reorganization had been made under date of April 9th, 1884, between certain mortgage bondholders and creditors of said Toledo, Delphos & Burlington Railway Company and certain mortgage bondholders and creditors of said Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois and James M. Quigley, Charles W. Pierce, Halsey J. Boardman, John McNab and Charles T. Harbeck; and under the terms of said agreement said Quigley, Pierce and Boardman were constituted a reorganization committee of said St. Louis Division bondholders, and said Quigley, Harbeck, and McNab were constituted a reorganization committee of said Toledo Division bondholders. For said Pierce one Warren D. Hobbs was thereafter duly substituted. A copy of said agreement is filed herewith marked A.

Third. The purchase of said divisions had been made by Kneeland under the terms of a memorandum dated December 18, 1885, between said Kneeland and said Quigley as chairman of said committees pending the settlement of a formal contract with Kneeland. A copy of said memorandum is filed herewith marked B.

Fourth. Subsequent to said foreclosure sales, Kneeland entered into two agreements for the reorganization and reconstruction of said lines of railroads so purchased by him, each dated January 23rd, 1886, the first with said Quigley, Boardman and Hobbs, said reorganization committee of the St. Louis Division bondholders; the
7 other with said Quigley, Harbeck and McNab, said reorganization committee of the Toledo Division bondholders. Copies of each of said agreements are filed herewith marked, respectively, C and D.

Fifth. Accordingly, and in pursuance of these agreements, the Toledo, Dupont and Western Railway Company was organized under the laws of the State of Ohio with a capital stock of $3,500,000; the Bluffton, Kokomo and Southwestern Railroad Company under the laws of the State of Indiana, with a capital stock of $4,277,500, and the Toledo, Charleston and St. Louis Railroad Company under the laws of the State of Illinois, with a capital stock of $4,432,500.

Sixth. On the organization of said companies, said Kneeland entered into a contract with each of them in substantially the same terms, and by each of said contracts Kneeland agreed to convey to the company party thereto the line of railroad and appurtenant property in the State in which said company had been incorporated, and to cause the other two companies so organized to consolidate with the company party to said agreement, and further agreed, in consideration of the securities to be issued by the consolidated company other than its common capital stock, that said consolidated company should within a reasonable time broaden the *guage* of the entire line from Toledo to East St. Louis and make the same a first-class standard-*guage* railroad and equip the same accordingly. In consideration of said agreement on the part of Kneeland and of such

conveyance to the corporation, party to said agreement, of said line of railroad forming the subject of said agreement, the company, party to said agreement, to deliver to Kneeland all its common capital stock, except the shares qualifying directors and as and for a further consideration for said purchase and conveyance, agreed that as soon as practicable after the contemplated consolidation should have been effected, the consolidated company should execute and issue in full and complete payment of the purchase price of said railroad and property and in full and complete payment for
8 such broadening of and the construction and equipment of the line of road of the consolidated companies and for the purpose of exchanging some of said stock and securities with the holders of certain securities issued by the companies theretofore owning and controlling said railroad and property, or portions thereof and for the payment of certain debts underlying certain rights of way and other proper corporate purposes the following securities:

(*a.*) An amount of fully paid capital stock of said consolidated company equal to the aggregate amount of the common capital stock of its three constituent companies.

(*b.*) $5,805,000.00 fully paid preferred convertible stock.

(*c.*) $9,000,000.00 first-mortgage six per cent. gold bonds with interest payable semi-annually and maturing within thirty years.

A copy of said agreement with the Ohio company is filed herewith marked E. The agreement with the Indiana company and with the Illinois company are respectively *mutatis mutandis* in the same form.

Seventh. Upon the execution of said contracts, Kneeland, by proper deeds, conveyed to the Ohio company said line of railroad in Ohio, to the Indiana company said line of railroad in Indiana, and to the Illinois company said line of railroad in Illinois. The consideration for such conveyance expressed in the deeds was, in the case of the Ohio company, its capital stock to the par amount of $3,499,400; in the case of the Indiana company, its capital stock to the par amount of $4,277,500, and in the case of the Illinois company, its capital stock to the par amount of $4,472,500. This stock was thereupon issued to Kneeland full paid.

Eighth. Thereafter, and on June 12th, 1886, said companies entered into articles of consolidation, which were duly filed
9 and recorded, and under which the above-named respondent Toledo, St. Louis and Kansas City Railroad Company was formed. The articles of consolidation, after reciting proper corporate action for the issue by said respondent railroad company of said preferred stock and of its six per cent. thirty-year gold coupon bonds to be secured by a first mortgage on its line of railroad and franchises, acquired and to be acquired, provided that the capital stock of the consolidated company, said respondent, should be $18,055,000, of which $12,250,000, the aggregate of the capital stock of the constituent companies, should be common stock; that said common stock should be issued in exchange share for share for the stock of the constituent companies, and that the directors and proper officers of the consolidated company should have power to

issue said preferred stock and said bonds and execute and deliver said first mortgage.

Ninth. Immediately upon such consolidation and on or about said June 12th, 1886, said respondent, Toledo, St. Louis and Kansas City Railroad Company said consolidated company formed under said articles of consolidation, authorized the execution and delivery of its said first mortgage and the issue of its said first-mortgage bonds described in said articles of consolidation and also authorized the issue of its said preferred and common stock and issued the same.

Said Toledo, St. Louis and Kansas City Railroad Company thereupon and on or about the 19th day of June, 1886, duly made and executed under its corporate seal and attested by the signatures of its president and secretary its $9,800,000 bonds bearing date the first day of June, 1886, and by the terms of each thereof said obligor promised to pay to the holder thereof, at the agency of said obligor in the city of New York the sum of $1,000 in gold coin, of the United States of the then present standard of weight and fineness on the first day of June, 1916, and to pay interest on said principal sum, semi-annually at its agency in the city of New York, in like gold coin, at the rate of six per cent., per annum from the first day of June, 1886, on the first days of June and December in each year until the payment of said principal sum, on presentation and surrender of coupons for such interest annexed to said bonds as said coupons should severally become due. To secure the payment of said bonds and the coupons thereto attached, said railroad company on or about said 19th day of June, 1886, duly acknowledged and delivered to the American Loan and Trust Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and Joseph E. McDonald, of the city of Indianapolis and State of Indiana, its certain indenture of mortgage or deed of trust, hereinafter called the first mortgage of said railroad company, and thereby conveyed to said trust company and said McDonald, upon the trusts therein stated, the line of railroad and other equipment and property therein specifically described. Said first mortgage was forthwith duly recorded in the proper offices. A copy of said first mortgage is annexed to the bill of complaint of the above-named complainant, Continental Trust Company of the City of New York, in this cause, and to it, for its contents your petitioner refers.

Tenth. Said first-mortgage bonds of the Toledo, St. Louis and Kansas City Railroad Company to the par amount of $9,000,000 and its said common stock to the par amount of $11,250,000, were, on the issue thereof delivered to Isaac W. White and Robert G. Ingersoll, trustees appointed under the two agreements dated January 23rd, 1886, for payment out and delivery by said trustees in accordance with the terms of said agreements, and from time to time after the deposit with said trustees of said first-mortgage bonds and said common stock, deliveries were made by said trustees under the provisions of said agreements of January 23rd, 1886.

Eleventh. Subsequent to said June 19, 1886, sundry disputes and

controversies arose between said Kneeland and said Toledo, St. Louis and Kansas City Railroad Company and on or about June 1st, 1891, an agreement bearing date on that day was made between said railroad company and said Kneeland, a copy of which is filed herewith marked F. To said agreement, said Quigley, Boardman and Hobbs, said reorganization committee of the St. Louis Division
11 bondholders, and said Quigley, Harbeck and McNab said reorganization committee of the Toledo Division bondholders, assented, and each of said committees approved said agreement of settlement Exhibit F, by assents thereto, copies of which are filed herewith, marked respectively G and H.

On June 3rd, 1891, said railroad company and said Kneeland entered into a further agreement bearing date on that day, supplemental to said agreement between them of June 1, 1891. A copy of said supplemental agreement is filed herewith marked I. To said supplemental agreement of June 3, 1891, each of said reorganization committees assented in writing. Copies of such assents are filed herewith, marked respectively J and K.

Twelfth. At the time of the execution of said agreements of June 1st, 1891, and June 3, 1891, between said railroad company and said Kneeland, said Kneeland had not completed payment of the purchase price of said railroad and property purchased by him at said foreclosure sales of the Toledo division and of the St. Louis division of the Toledo, Cincinnati & St. Louis Railroad Company, and there were then outstanding, unpaid claims to the amount of $350,000 and upwards which under the terms of said foreclosure decrees had been contested by said Kneeland, and in respect of which a priority was claimed which, if finally established, entitled said claims to be paid out of the proceeds of said divisions, in priority to any distribution of said proceeds of sale, to the holders of the bonds secured by the mortgages foreclosed by the respective decrees under which said sales had been made, and said agreement of June 1st, 1891, so set forth.

By said agreement of June 1st, 1891, after providing for the disposition, in accordance with said agreement, of certain securities in the hands of said trustees under said agreements of January 23, 1886, the parties to said agreement of June 1, 1891, consented and requested said trustees to deliver all the rest and residue of the securities of the party of the first part thereto, said Toledo, St. Louis and Kansas City Railroad Company, which should remain in the hands of said two trustees, to the Farmers' Loan and Trust Company of the City of New York, upon the execution by said trust
12 company, of a declaration of trust to the effect that it agreed to receive and hold such securities in accordance with said trust, and that said trust company should thereupon hold the same in trust as security for the payment of all purchase-money under said foreclosure sale due from said Kneeland, to the extent of all claims upon the proceeds of said sale which were prior to the claims of said first-mortgage bonds of said Toledo, Delphos and Burlington Railway Company of Ohio and Indiana, and said Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois,

and upon the further trust to pay over and deliver said securities to said Kneeland as fast as he should pay said claims against said proceeds of the foreclosure sales in the manner and at the rate in said agreement provided.

Thereafter and in pursuance of said agreement, said Farmers' Loan and Trust Company executed at the foot of said agreement of June 1, 1891, a declaration of trust as therein provided, and which is set out at the foot of Exhibit F, hereto, and which was agreed to and specially approved in writing by the parties to said agreement.

Thirteenth. Thereafter and in pursuance of said agreement of June 1st, 1891, the trustees under said agreements of January 23, 1886, delivered to said Farmers' Loan and Trust Company the following securities to be held by it under said declaration of trust, to wit:

$16,000 first-mortgage bonds of said Toledo, St. Louis and Kansas City Railroad Company, bearing the coupon maturing June 1st, 1891, and subsequent coupons; $117,000 first-mortgage bonds of said Toledo, St. Louis and Kansas City Railroad Company, bearing the coupon maturing December 1st, 1891, and subsequent coupons; $25,000 first-mortgage bonds of said Toledo, St. Louis and Kansas City Railroad Company bearing the coupon maturing June 1st, 1893, and subsequent coupons; $500,000 preferred stock of said railroad company and $1,169,000, common stock of said railroad company.

Thereafter and in or about the month of June 1893, said Isaac W. White, one of the trustees under said agreement of January 23, 1886, surrendered to said Farmers' Loan and Trust Company,
13 to be held by it for the purposes and in pursuance of said agreement of settlement of said declaration of trust, first-mortgage bonds of said Toledo, St. Louis and Kansas City Railroad Company to the amount at par of $26,000, bearing coupon maturing June 1st, 1893, and all subsequent coupons. Said bonds so delivered by said White were part of 55 bonds appropriated by the trustees under said agreements of January 23, 1886, for their compensation, 33 of which had been taken by said White.

Fourteenth. Said Farmers' Loan and Trust Company has, since the respective deliveries thereof to it as above set forth, held and now holds said first-mortgage bonds to the par amount of $158,000 with coupons as aforesaid, said $500,000 par value of said preferred stock and said $1,169,000 par value of said common stock of said Toledo, St. Louis and Kansas City Railroad Company, under the terms of said declaration of trust.

Fifteenth. On or about the 18th day of May, 1893, Joseph S. Stout, and Randolph F. Purdy, filed their bill in this court against said Toledo, St. Louis and Kansas City Railroad Company for a particular statement of the contents whereof the petitioner prays leave to refer to said bill, of record in this court, and thereafter filed similar bills in the circuit court of the United States for the district of Indiana and in the circuit court of the United States for the southern district of Illinois. Thereafter, and on or about the 18th day of May, 1893, by an order of this court duly entered on said bill, and

by order of said circuit court for the district of Indiana and the southern district of Illinois, respectively entered on the said bills therein, Samuel R. Callaway was duly appointed receiver of said Toledo, St. Louis and Kansas City Railroad Company and all its property, and thereafter duly qualified as such.

Thereafter, said Toledo, St. Louis and Kansas City Railroad Company made default in the payment of the interest on said first-mortgage bonds which matured and became due and payable on the 1st day of June, 1893, and thereafter and on or about the 16th day
14 of December, 1893, Continental Trust Company of the City of New York, and John M. Butler, who had theretofore been duly substituted as trustees under said first mortgage, in the place and stead of said American Loan and Trust Company and said Joseph E. McDonald, filed their bill in this court and in said circuit court for the district of Indiana and said circuit court for the southern district of Illinois, praying for the foreclosure of said first mortgage. For the contents of said bill in this court, petitioner prays leave to refer to the original bill in this cause of record in this court. Thereupon, said Samuel R. Callaway was also appointed receiver under said bills of foreclosure by said courts respectively, and by orders entered in each of said causes, and said action of Stout and Purdy was consolidated with said action of foreclosure under the title of said action of foreclosure.

Sixteenth. Your petitioner is and has been since about the first day of December, 1898, receiver of said Toledo, St. Louis and Kansas City Railroad Company and of all its property duly appointed in succession to R. F. B. Pierce, who was appointed in succession to Daniel D. Davis, who was appointed in succession to said Samuel R. Callaway, by orders of each of said circuit courts respectively, entered in said causes, and the petitioner on his appointment duly qualified as such receiver, and has since been and now is in possession of said railroad and property.

Seventeenth. Notwithstanding said agreement of settlement of June 1st, 1891, said Kneeland failed thereafter to make payment of the unpaid residue of the purchase price of said railroad and property purchased by him at said foreclosure sales of the Toledo division and of the St. Louis division of the Toledo, Cincinnai and St. Louis Railroad Company, although claims were established in said foreclosure actions to the amount of upwards of $350,000 in respect of which a priority was adjudged for payment out of the proceeds of sale of said divisions, before any distribution of said proceeds of sales to the holders of said bonds secured by the mortgages foreclosed by the respective decrees under which said sales had been made.

15 By an order of this court entered in this cause on the 7th day of February, 1898 upon the petition of R. F. B. Pierce, then receiver of said respondent Toledo, St. Louis and Kansas City Railroad Company and of its property, notice of the presentation and prayer of which, and of the hearing thereon, had been given to all the parties to the above-entitled cause this court found that there

was due in respect of said prior claims and decrees the following amounts:

1. To the American Surety Company, of New York, $323,909.99, and interest thereon from the 1st day of July, 1894, at the rate of six per cent. per annum.

2. To the Northern National Bank of Toledo, Ohio, and others whose claims were held by said bank, $107,935.33, and interest thereon from the 1st day of January, 1898, at the rate of six per cent. per annum.

3. To the State Trust Company of New York, $52,247.30, and interest thereon from the 1st day of January, 1898, at the rate of six per cent. per annum, and that the holders of said claims and decrees were entitled to the payment thereof out of the property embraced in said first mortgage of said Toledo, St. Louis and Kansas City Railroad Company, in priority to said mortgage, and to the rights of the holders of the bonds and coupons issued thereunder and secured thereby, and by said order said receiver was directed to take up said claims and decrees and to pay therefor said amount thereof with interest, and for that purpose was authorized to apply out of the moneys arising from the operation of the railroad and property embraced in said first mortgage of said respondent railroad company, the sum of $125,000. It was further provided by said order that for the residue of the amount necessary to take up said claims and judgments with interest as aforesaid, receiver's certificates be issued to the amount of $430,000, and said receiver was authorized to dispose of said certificates in accordance with said order, and, by said order, said certificates were made a first and best lien upon all the property and assets of said respondent Toledo, St. Louis
16 and Kansas City Railroad Company, of every nature and description, wheresoever situated, then in the possession of this court and paramount and superior to the lien thereon of said first mortgage of said respondent railroad company, and to all liens subsequent thereto, and to all rights and claims therein of any party to the above-entitled cause, or represented by any party to the above-entitled cause, and that the same should be paid out of the proceeds of sale of said mortgaged premises, unless sooner paid, and might also be paid out of any funds arising from the operation of said mortgaged railroad and property available for that purpose. For the precise contents of said order the petitioner prays leave to refer to the original order entered in this cause, of record in this court. Similar orders were also entered in the circuit courts of the United States for the district of Indiana and for the southern district of Illinois, respectively in said actions of foreclosure pending therein.

In pursuance of said orders said receiver took up said claims and decrees and paid therefor the sum of $555,759.42, the amount thereof with interest thereon, as found and decreed to be due by said orders. Said payment was made by said receiver out of the moneys in his hands arising from the operation of the railroad and property embraced in the first mortgage of said respondent railroad company, and by the issue, in accordance with the said orders, of receiver's certificates to the aggregate amount of $430,000 in the form therein

set out, and with the effect and secured by the lien in said orders provided.

Between July 1st, 1893, and July 1st, 1894, the receiver in this cause had paid, under orders of court in respect of said claims of American Surety Company, interest thereon quarterly at the rate of six per cent. per annum and in respect of said claims of the Northern national bank and others whose claims were represented by said bank and in respect of said claims of the State Trust Company interest thereon quarterly at the rate of six per cent. per annum.

17 Between July 1st, 1894, and January 1st, 1898, the receiver in this cause, under orders of this court duly made and entered, further paid in respect of said claims of the Northern National Bank of Toledo, Ohio, and others, whose claims were represented by said bank, interest quarterly on said sum of $107,935.33, from July 1st, 1894, to January 1st, 1898, at the rate of six per cent. per annum, and, in respect of said claims of the State Trust Company of New York, interest quarterly on said sum of $52,247.30, from the 1st day of July, 1894, to January 1, 1898, at the rate of six per cent. per annum.

For the contents of said orders the petitioner prays leave to refer to the original orders of record.

Of said receiver's certificates so issued, certificates to the amount of $400,000, together with interest on said entire issue from time to time outstanding, have been paid in accordance with the terms of said certificates by the receiver for the time being of said Toledo, St. Louis and Kansas City Railroad Company out of the moneys in his hands arising from the operation of said mortgaged railroad and property, and by the decrees of foreclosure hereinafter mentioned, said receiver's certificates remaining outstanding, are required and directed to be paid out of the proceeds of sale of the property embraced in said first mortgage of said respondent, Toledo, St. Louis and Kansas City Railroad Company, unless sooner paid out of the funds arising from the operation of the mortgaged property.

Eighteenth. On or about April 1, 1898, a decree was duly entered in this cause foreclosing said first mortgage of said respondent railroad company and directing a sale of the mortgaged premises. For the contents of said decree, the petitioner prays leave to refer to the original decree, of record in this court in this cause. Decrees of similar effect were thereupon duly entered in said actions pending in the district of Indiana and in the southern district of Illinois.

Said decree of foreclosure and sale entered by this court having been duly affirmed by the United States circuit court of ap-

18 peals for the sixth circuit on appeals prosecuted to said court, said mortgaged premises were, in pursuance of said decrees of foreclosure, sold on the 27th day of March, 1900, to Morton S. Paton and Richard B. Hartshorne for the sum or price of $12,200,000, and said sale was by order of this court entered April 18, 1900, by order of the said circuit court for the district of Indiana, entered April 23, 1900 and by order of the circuit court for the southern district of Illinois, entered April 23, 1900 duly confirmed

and made absolute. For the contents of said order of confirmation in this court, petitioner prays leave to refer to the original thereof, of record in this cause.

Nineteenth. At the time of said sale, there was due in respect of said first-mortgage bonds and coupons of said Toledo, St. Louis and Kansas City Railroad Company, approximately the sum of $13,500,000, and the dividend to which any such bond with the coupon maturing June 1, 1893, and subsequent coupons, will be entitled out of the proceeds of sale, as the petitioner is informed and believes, will not exceed the sum of $1,260.

Twentieth. By the terms of said decrees of foreclosure and sale hereinabove set forth, it is adjudged that said first mortgage of said respondent railroad company is a lien upon all moneys, profits and income derived by any receiver in said causes from the operation of said mortgaged railroad and property, and all said amounts which have been so paid in taking up said prior claims and decrees, have been so paid or will be paid either out of said mortgaged premises or out of moneys derived by the receiver from the management and operation thereof.

Twenty-first. The petitioner is informed that said preferred stock and said common stock of said Toledo, St. Louis and Kansas City Railroad Company have no value.

The petitioner, therefore, prays the decree of this court that the petitioner is entitled, out of said first-mortgage bonds and said
19 preferred stock and said common stock in the hands of said Farmers' Loan and Trust Company, to be reimbursed all said amounts with interest thereon from the respective dates of payment thereof, which by the petitioner and by his predecessors in the receivership in this cause of said Toledo, St. Louis and Kansas City Railroad Company, have been paid in respect of said prior claims, whether for principal or interest; that said securities, towards satisfaction thereof, be delivered to the petitioner, to be by him delivered, as part of the mortgaged premises, to the purchasers of the mortgaged premises, at said sale thereof, made under said decrees of foreclosure of said first mortgage of said Toledo, St. Louis and Kansas City Railroad Company, or that said securities be sold and the proceeds thereof, paid to your petitioner, for payment by him to said purchasers of the mortgaged premises or be paid to said purchasers, and for such other and further relief as may be just.

BROWN & GEDDES,
Solicitors for Petitioner.

CLARENCE BROWN, *Of Counsel.*

UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division, } *ss:*
County of Lucas,

Samuel Hunt, being duly sworn, deposes and says: I am the petitioner named in the foregoing petition. I have read the foregoing petition and know the contents thereof, and the same is true to the best of my knowledge information and belief.

SAMUEL HUNT.

Sworn to before me this 28th day of May, 1900.
[SEAL.] NEIL McKINNON,
Notary Public, Lucas County, Ohio.

(Endorsement:) Filed. May 28, 1900. Irvin Belford, clerk.

20 "A."

EXHIBIT No. 210. Dec. 1, 1896. Irvin Belford, Special Master.

An agreement by and between the mortgage bondholders and creditors of the Toledo, Delphos & Burlington Railroad Company and mortgage bondholders and creditors of the Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois, hereinafter mentioned *inter sese*, party of the first part, hereinafter for brevity called the creditors, and James M. Quigley, Charles W. Pierce and Halsey J. Boardman, John McNab, Charles T. Harbeck, also bondholders and creditors of the corporations above named, parties of the second part, for brevity hereinafter called the trustees.

Whereas, the Toledo, Delphos and Burlington Railroad Company a corporation existing under the laws of the respective States of Ohio and Indiana, did on or about the 17th day of January, 1880, execute and deliver to the Central Trust Company of the City of New York, its certain mortgage or deed of trust of all its property and franchises, including its line of railroad extending from Toledo, in the State of Ohio, to Kokomo, in the State of Indiana, a distance of about one hundred and eighty-five miles, to secure the payment of its first-mortgage bonds to the amount in the aggregate of one million, two hundred and fifty thousand dollars, the said bonds bearing date the first day of January, 1880, each for the sum of one thousand dollars, payable on the first day of January, 1910, with interest payable in the meantime semi-annually, at the rate of 6% per annum, on the first days of January and July of each year.

21 And whereas, the said company did, under the same date, execute and deliver its certain other deeds of trust or mortgage, subject, however, to the mortgage above mentioned, to secure the payment of certain other bonds of the said company, called income bonds, to the amount in the aggregate of one million two hundred and fifty thousand dollars.

And whereas, the said company did, on or about the 21st day of June, 1889, execute its mortgage or deed of trust, known as the terminal trust mortgage, to secure bonds of the said company known as terminal trust bonds, to an amount in the aggregate of two hundred and fifty thousand dollars, bearing six per cent. interest, payable semi-annually, the principal being payable on the first day of July, 1910.

And whereas, the said company did also create and issue its capital stock to an amount in the aggregate of about four million dollars;

And whereas, the said company did make default, on or about the 1st day of January, 1883, in the payment of interest upon the

mortgage bonds herein first above mentioned, and therefor actions for the foreclosure of the said mortgage were brought against the said company by the said Central Trust Company, trustee, in the circuit court of the United States, for the northern district of Ohio, western division, and in the circuit court for the district of Indiana, which actions are now pending;

And whereas, the said company and certain other railroad corporations were, after the execution of the said mortgages and issue of the aforesaid bonds and shares, consolidated under the name of the Toledo, Cincinnati and St. Louis Railroad Company;

And whereas, the said Toledo, Delphos and Burlington Railroad Company and the said Toledo, Cincinnati and St. Louis Railroad Company are insolvent, and it is necessary to prosecute the beforementioned actions to decrees of foreclosure and sale in order to avail of the mortgage security;

And whereas, the Toledo, Cincinnati and St. Louis Railroad Company, a corporation of the States of Indiana and Illinois, claiming to own and operating a line of railroad extending from Kokomo, aforesaid, through the States of Indiana and Illinois, to East St. Louis, in the State of Illinois, a distance of about two hundred and sixty-eight miles, and known as the Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois, did, on or about
22 the 23rd day of July, 1881, execute and deliver to the said Central Trust Company, as trustee, a mortgage or deed of trust, to secure its bonds, to an amount in the aggregate of three million dollars, known as first-mortgage bonds, dated July 23, 1881, payable in forty years, with interest at the rate of six per cent. per annum, payable semi-annually, on the first days of January and July in each year;

And whereas, the said last-mentioned company did, on or about the same date, also execute and deliver to the said Central Trust Company, trustee, its mortgage or deed of trust, subject to the mortgage last above mentioned, to secure a further issue of its bonds, known as income bonds, to the amount of three million dollars;

And whereas, the said Toledo, Delphos and Burlington Railroad Company and the said Toledo, Cincinnati and St. Louis Railroad Company after the issue of the bonds and shares above mentioned, and about the 25th day of February, 1882, were, together with certain other corporations, consolidated under the name of the Toledo, Cincinnati and St. Louis Railroad Company, and thereafter such last-mentioned consolidated company created and issued its bonds, called debenture bonds, to the amount of about four hundred and sixty thousand dollars in the aggregate, and also certain other obligations;

And whereas, the said Toledo, Cincinnati and St. Louis Railroad Company and certain other corporations were, on or about May, 1883, consolidated under the name of the Toledo, Cincinnati and St. Louis Railroad Company, hereinafter called the consolidated company, and did create and issue (as is supposed) about nineteen million dollars of common capital stock, and about two million eight hundred and fifty thousand dollars of preferred stock;

And whereas, the said last-mentioned Toledo, Cincinnati and St. Louis Railroad Company did make default in the payment of interest on its first-mortgage bonds on the first day of January, 1883, and thereafter an action was brought in the said circuit court of the United States for the district of Indiana, for the foreclosure of the said mortgage, which action is still pending;

And whereas, said last-mentioned corporation, mortgagor, and the said consolidated company, are both insolvent;

And whereas, the railroad of the Toledo, Delphos and Burlington Railroad Company, the mortgagor first mentioned, connected with the railroad of the Toledo, Cincinnati and St. Louis Railroad Company at Kokomo, aforesaid, and the two lines of road so con-
23 nected constitute a through line of road, extending from Toledo to East St. Louis, aforesaid;

And whereas, the value and earning power of the roads and franchises aforesaid, as well as their utility to the public, is mainly dependent upon unity of ownership and management, and the parties to this agreement, mortgage bondholders and creditors of the said corporations respectively, of the class and to the amount set opposite their respective names, have a common interest in bringing about such unity of ownership and management, on the basis and by the means hereinafter specified, as near as may be;

Now, therefore, this agreement witnesseth:

First. That the creditors, parties of the first part, have constituted, and do hereby constitute, the said trustees, parties of the second part, their trustees, attorneys and agents, for all and singular the objects and purposes hereinafter specified, and do declare that the powers and authority hereby conferred are coupled with an interest in the said trustees and are irrevocable. And for such objects and purposes the said creditors, and each of them, shall and will, upon the signing of this agreement, respectively deposit their bonds and evidences of debt, with the Metropolitan Trust Company of New York City, unconditionally, subject to the demand, order and disposition of the said trustees, pay the sums of money and do all other acts and things hereinafter and in the succeeding plan of organization, part thereof, specified to be done at and after the signing of this agreement.

Second. The said trustees shall proceed, with all convenient speed, to make themselves or other parties to this agreement, holders of the mortgage bonds of the said Toledo, Delphos and Burlington Railroad Company, parties to the pending actions for a foreclosure of the mortgage of that company, and also to make themselves, or other parties to this agreement, holders of the mortgage bonds of the said Toledo, Cincinnati and St. Louis Railroad Company, parties to the pending suits for the foreclosure of the mortgages of that company. The said trustees, in co-operation with the trustees of the said several mortgages, or otherwise, as the case may require, shall conduct and prosecute the said foreclosure suits, with all convenient speed, to decrees and judgments of foreclosure and sale, and cause the mortgaged property and franchises to be exposed for sale at public auction according to law. The said trustees

may and shall commence and prosecute all such new suits and actions in their own name or the names of creditors, &
24 parties hereto, as they may be advised are necessary and proper (1) to settle and determine all questions affecting the title of the mortgaged premises above mentioned, or any part thereof, in order that a clear and good title may be conveyed to the purchaser at the foreclosure sales of the mortgaged premises; (2) for the enforcement of any liens, trusts or equities of whatever kind existing in favor of the creditors against any person, persons, or corporations whatsoever; (3) to prevent any breach of trust or to recover for any breach of trust heretofore committed by any person, persons or corporations, affecting the rights of the creditors; and the trustees may settle, compromise and adjust all such suits and actions upon such terms as they may deem proper. And the trustees may settle, compromise and adjust without suit, in their discretion, any and all claims and demands affecting the interests of the parties hereto in the premises, or relating to the properties and franchises herein referred to, or to any part thereof.

Third. At the foreclosure sale or sales under the mortgage or mortgages of the said Toledo, Delphos and Burlington Railroad Company and under the mortgage or mortgages of the said Toledo, Cincinnati and St. Louis Railroad Company, hereinbefore referred to, the trustees, by themselves or their agent or agents, shall buy the railroad property, and franchises exposed for sale, provided the means placed at their disposal by creditors are sufficient to enable the trustees to make such purchases; and the title acquired by such purchases shall be held and dealt with for the purposes of this agreement and the trusts herein declared, and for no other purpose.

Fourth. The trustees shall pay for the property and franchises so purchased, as far as may be practicable, with the bonds of creditors to be deposited as before mentioned, subject to the trustees' order and disposition, and, so far as necessary, with any moneys paid in under this agreement, as hereinafter provided for; and any additional sums of money that the trustees may require for such purchase or for the payment of receiver's indebtedness, costs, liens, charges and expenses of any and every kind, whatsoever, the trustees may raise by imposing in such way, manner and form as they in their sole discretion may think best, a fair, just, ratable and equal lien and charge upon all the securities deposited by the creditors, and, by way of anticipation upon all new securities to which the creditors may be entitled under this agreement, and upon the first-mortgage bonds of the new corporation to be created as hereinafter provided. Such charge
25 and lien shall be so arranged and so worked out as ultimately to fall with substantial equality upon the individual interests of creditors; and subject to this provision the trustees shall have full and absolute discretion in the premises. The trustees shall not be bound or obliged to make such purchase, as aforesaid, or any one or more of such purchases, if, in consequence

of unforeseen events and obstacles, it shall appear to them impracticable to carry out the main objects and purposes of this agreement, nor unless they shall be possessed, by the deposit of bonds and money by parties to this agreement and the moneys they may be able to raise in the way above specified, of sufficient means to enable them to make such purchases or any one of the contemplated purchases, but in that case the bonds and money of the creditors, not used, shall be returned to the creditors, together with any interest which may have been allowed thereon; it being understood and agreed that all moneys paid in, other than that paid in on subscription for new shares, is subject to the disposition of the trustees for current expenses, and that the money subscribed for new shares can only be used as part of the purchase-money.

Fifth. If the trustees shall purchase the several mortgaged railroads and properties, with their franchises and appurtenances, hereinbefore mentioned, and all of the same, at the foreclosure sale thereof as herein contemplated, they shall thereafter, with all convenient speed and with due regard to the laws of the respective States in which said railroads and property or part thereof are situated, organize a corporation, under such name as they may adopt, to take title to all the railroads and properties so purchased, with franchises, rights and appurtenances thereto belonging, and shall convey the same to such corporation in such way and manner as may be required by the laws aforesaid, in order to vest in said corporation a good title to the same and to every part thereof. And the said trustees shall cause the corporation so to be created to create and to deliver to them in payment for the property and franchises so to be conveyed, the bonds, shares and securities specified in the succeeding plan of organization which is to be taken as part hereof, and to do all and singular the acts and things hereinafter mentioned.

If, in order to ultimately vest all the property and franchises aforesaid in one corporation as hereby contemplated, it shall first be necessary to create separate corporations in the respective States aforesaid, to make separate conveyances, to such corporations, and then to consolidate the same, the trustees shall cause
26 such corporations to be created and consolidated, and shall do whatever they may be advised by counsel to be needful and proper in the premises to the end aforesaid.

Sixth. It is contemplated that it may not be lawful or practicable to cause the entire line or lines of railroad and the terminal property, together extending from Toledo to East St. Louis to be sold as an entirety at one public sale, and that it may be necessary to sell the roads of the respective companies above mentioned separately, under the respective mortgages of each company, and therefore, that it may happen that the said trustees, by reason of unforeseen obstacles and events, may be able to purchase one of the said lines of road and not the other. In that case the trustees representing, as hereinafter classified, that class of creditors directly interested in the property purchased may in their sole discretion do with the property so purchased whatever they shall deem to be for

the best interests of such creditors, being only bound to exercise good faith and their best judgment, and so to arrange that whatever is ultimately realized for such creditors, and in whatever form, shall be equally and fairly distributed among them; or the trustees may, in their discretion and upon such reasonable notice, by publication or otherwise, as they may determine, call a meeting or meetings in the city of New York or Boston of such of the creditors, parties hereto, as may be so interested in the property so purchased, in order to determine what disposition shall be made thereof; and a majority in interest of such first-mortgage bondholders at any such meeting or meetings shall determine and decide all questions submitted, and their decision shall be binding and conclusive upon all.

Seventh. The trustees shall have full power to settle, compromise, adjust and litigate all claims and demands of every kind and description, upon, against, or in favor of either of the said corporations, mortgagors or debtors, and the railroads and property hereinabove mentioned, or any part thereof, and the acts and doings of the said trustees, in the premises shall be conclusive and binding upon the creditors, parties of the first part, their successors and assigns.

In the event of a purchase by the trustees as herein contemplated, the trustees may, in their discretion, permit the property purchased to remain in the custody and operation of a receiver until the new corporation has been created and is ready to take the title to, or possession of the same; or the trustees, by themselves or their
27 agents, may take possession of the property meantime, in which latter case the trustees shall be fully indemnified by the creditors, parties of the first part, for all loss, cost and damage which the trustees may sustain, directly or indirectly, by reason of taking such possession, not incurred by reason or in consequence of their direct, personal and gross negligence.

Eighth. The trustees may in all cases act by a majority of their number, and they may delegate to any one of their number such power and authority in the premises, as they may think proper and the acts and doings of such majority, and of such trustee exercising delegated powers, shall have the same validity and binding effect as if done and performed by the whole body of trustees acting jointly. The trustees may also appoint one or more of their number to act as special representative or representatives of particular classes of creditors, parties hereto, but to which class such representative or representatives must also belong (although his or their interest need not be exclusively with that class), and the acts and doings of such class representative or representatives shall be absolutely binding and conclusive upon the class which he or they may be designated to represent. The trustees may also appoint and dismiss such agents from time to time, and confer upon them such authority, as they may think proper. Any and all vacancies occurring in the body of trustees, parties of the second part, from time to time, by death or any other cause or causes whatsoever may and shall be filled by the remaining trustees or trustee, and any successor or successors so appointed shall, upon being notified of such

appointment and accepting the same, in writing, at once and by mere force of such appointment and acceptance, and without further act or deed, become vested with all the power and authority, and subject to all the duties and responsibilities appertaining, under the terms thereof, unto his or their predecessors in the trust. Until and unless the trustees shall change the representation of the respective classes of the creditors in pursuance of the power above conferred, James M. Quigley, Halsey J. Boardman and Charles W. Pierce, and their successors shall be the trustees especially representing the creditors of the Toledo, Cincinnati and St. Louis Railroad Company, with power to fill vacancies in their number in the manner specified in the eighth paragraph hereof, and to act by a majority of their number and to delegate powers, as in the said paragraph is provided; and James M. Quigley, John McNab and Charles T.
28 Harbeck and their successors shall be the trustees especially representing the creditors of the Toledo, Delphos and Burlington Railroad Company, with like power to fill vacancies in their number, to act by a majority and to delegate powers as last above mentioned.

Ninth. The trustees shall create and issue their certificates for all bonds, and securities deposited with or for them in manner aforesaid, in suitable and proper form and so as to be convenient for transfer as may be, entitling the holder to the proper kind and amount of new securities when issued, and also receipts for all moneys paid in, to or for them; in all cases stating in their certificates and receipts that the bonds, shares, securities and moneys have been deposited and paid under the terms and provisions of this agreement. Every assignee of such certificate or receipt shall, for all the purposes of this agreement, be considered as standing in the place of the original assignor, and shall have no other or greater rights whatsoever in the premises. The trustees shall cause the new bonds and shares contemplated by this agreement to be executed and delivered to them with all convenient speed, and with like convenient speed they shall cause the same to be delivered to the parties entitled thereto in exchange for the trustees' certificates.

Tenth. Upon the creation and organization of the company that may be organized to take title to the property purchased by the trustees under the provisions of this agreement the trustees and the said company are hereby authorized and empowered to adjust and finally settle all the accounts of the trustees, to arrange and settle the amount of their compensation, and all questions arising out of the acts and doings of the trustees under this agreement; and the said corporation is authorized and empowered to give to the trustees a general and final release and discharge in the premises, which shall be binding and conclusive upon each and every one of the persons composing the party of the first part, their respective executors, administrators and assigns.

Eleventh. It is contemplated by the respective parties hereto, in the course of the execution of this agreement, questions, difficulties and obstacles will arise that cannot be foreseen and provided for, and that in order to effectuate the main purposes and objects of this

agreement, and at the same time to protect the trustees from a too onerous responsibility, it is necessary that the trustees should be invested with a large discretion. Therefore, it is further agreed that if, by reason of any fact or circumstance unforeseen or
29 unprovided for or any event hereafter occurring, it shall be impracticable to execute and carry out the provisions of this agreement, or any of them, literally and strictly, it shall not for any such reason be permitted to fail, but it shall be executed according to the substantial purpose and meaning thereof as interpreted by the trustees, and as near thereto as in their judgment may be reasonably practicable, and for this purpose the said trustees, preserving the order of rank and substantial rights of the several parties comprising the party of the first part as between themselves, shall have power to supply and remedy any defect in the said plan of organization that may hereafter appear; and they may exercise their discretion in respect of all matters not herein expressly provided for. The said trustees may and shall decide all questions that may arise as to the construction of this agreement, or any part thereof, and their decision shall be final and binding upon the creditors, parties of the first part. The said trustees shall not be jointly liable under this agreement, but each shall be liable only for his own willful default; nor shall either of them be responsible (while himself acting in good faith), for the acts or omissions of any agent, attorney or other person employed by them, or either of them.

Twelfth. The said Metropolitan Trust Company shall under this agreement and in respect of every matter and thing herein contemplated to be done by the said company, be liable only for its own good faith and reasonable diligence; and in respect to the disposition of the bonds and money that may be deposited with the said trust company, the order, receipts and acquittances of the said trustees, or either class of trustees, shall, in favor of the said company, be final and conclusive upon all parties hereto.

Thirteenth. If at any time before the purchase of both the railroads herein mentioned, for account of the parties to this agreement, for any reason, unity and harmony of action for bringing about in the manner herein contemplated, the uniting of the two properties mentioned should be found to be impracticable, this trust shall cease to be a joint trust for the bondholders and creditors of the abovementioned corporations, and shall become a separate trust for the benefit of each class respectively. The trustees for either class may notify the fact of such severance of the trust to the parties to this agreement, by publication in the press or otherwise, and to the Metropolitan Trust Company; and thereupon the bonds of the said Toledo, Delphos and Burlington Railroad Company, deposited by the holders and any unexpended balance of money paid in
30 by them in respect of such bonds and the deposit thereof, and the right to the possession thereof, shall immediately vest in the trustees for that class of bondholders; and the bonds of the Toledo, Cincinnati and St. Louis Railroad Company, deposited by the holders thereof, and any unexpended balance of money, paid in by them in respect of such bonds and the deposit thereof, and the

right of the possession of such bonds and balance shall immediately vest in the trustees for that class of bondholders. And in the event of such severance of the trust, the trustees for the respective classes above mentioned shall be governed by the provisions of the sixth paragraph hereof, as far as applicable to the case. Nothing in this agreement or in the plan of organization is to be construed as an admission as to rights of the several classes of persons constituting the parties of the first part as between themselves, except for the purpose of carrying out the plan of organization in its entirety on the basis of the general compromise and adjustment specified in the plan.

Fourteenth. For convenience, separate copies or duplicates of this agreement may be signed by the respective persons constituting the party of the first part with like effect as though all of said persons had signed one and the same original; and together the said copies or duplicates shall be considered as constituting one and the same instrument and agreement. The trustees may limit the time for assenting to, and signing, this agreement by those entitled to become parties thereto, to such period as they may think proper, and may, in their discretion, and from time to time, extend the time for such assent, and such limitation and extension may be by publication of such notice in the press or in such other way as the trustees may determine.

Plan for Organization.

First-mortgage bonds.—The new company to create and issue to the trustees bonds to the amount of $6,750,000, representing about $15,000 per mile of the whole line, to be secured by a first mortgage upon all its property and franchises; the bonds to be for $1,000 each, payable forty years after date, and bearing interest at the rate of six per cent., payable semi-annually. The trustees shall negotiate and sell so many of these bonds as may be necessary in order to raise money for the reconstruction of the line of railroad, including change of gauge, equipment, the acquisition of terminal facilities, and for other purposes mentioned in this agreement. An amount equal to two years' interest upon bonds actually sold shall be
31 set aside out of the proceeds of sale for the payment of such interest.

Second-mortgage bonds.—The new company to create and issue to the trustees second-mortgage bonds to the amount of $7,000,000, to be secured by a second mortgage of all its property and franchises; the bonds to be payable fifty years after date, bearing interest at the rate of four per cent. per annum from January 1, 1888, to January 1, 1893, and six per cent. per annum from that time until their maturity; and the said bonds and mortgage to contain a provision that the said mortgage shall not be foreclosed before 1890, unless in case of default in the payment of interest on the first-mortgage bonds, and in the event of such default the principal and interest of the second-mortgage bonds shall at once, and by virtue of such default, become due and payable.

Holders of the first-mortgage bonds of the said Toledo, Cincin-

nati and St. Louis Railroad Company who become parties to this agreement and pay, at the time of signing, $10, in respect of every bond of one thousand dollars held by them, shall receive trustees' certificates for new second-mortgage bonds to an amount equal to the amount of such first-mortgage bonds held by them, including interest thereon to be computed from last payment to the 1st day of January, 1888, at six per cent. per annum.

Holders of the first-mortgage bonds of the Toledo, Delphos and Burlington Railroad Company who become parties to this agreement and pay, at the time of signing, $10, in respect of each bond for one thousand dollars held by them, shall receive trustees' certificates for new second-mortgage bonds to an amount equal to the amount of such first-mortgage bonds held by them, including interest to be computed from last payment to the 1st day of January, 1888, at six per cent. per annum, to which amount shall be added a sum equal to fifty per cent. of the principal of such first-mortgage bonds, excluding interest.

Debenture subscription.—The trustees shall issue their certificates for new second-mortgage bonds to the subscribers (parties hereto) or their assigns, to what is known as the debenture subscription for six hundred thousand dollars of December, 1882, for an amount equal to five-eighths of the face of the obligations or receipts held by them excluding interest, that is to say, for five-eighths of about four hundrd and sixty thousand dollars.

Such being the estimated amount actually paid on account of such six hundred thousand debenture subscription to and including July 1st, 1883.

32 The trustees' certificates to be exchanged for second-mortgage bonds of this new company when they are issued when tendered in the sums of one thousand dollars.

Preferred stock.—The new company shall create and deliver to the trustees preferred capital stock, in shares of one hundred dollars each, to the amount of twelve million dollars entitled to a six per cent. (non-cumulative), dividend before any dividend shall be paid on the common stock.

The holders of income bonds of the Toledo, Cincinnati and St. Louis Railroad Company, being a second mortgage on the road from Kokomo to East St. Louis, parties hereto, who shall at the time of signing subscribe in books to be prepared for that purpose by the trustees for an amount of such preferred stock equal to the amount of their bonds deposited, and shall then pay five dollars in respect of each share so subscribed for, shall receive trustees' certificates calling for such shares when issued.

The holders of income bonds of the Toledo, Delphos and Burlington Railroad Company, secured by a second mortgage of that company upon its said road, extending from Toledo to Kokomo, parties hereto, who shall at the time of signing subscribe in books to be prepared by the trustees for that purpose for an amount of such preferred stock equal to the amount of their bonds deposited, and shall then pay to the trustees, in respect of each share so subscribed for, the sum of five dollars, shall receive the trustees' certificates calling

for the shares when issued, and shall receive at the same time certificates calling for an additional amount of such preferred stock, equal to fifty per cent. of their said bonds so deposited; provided they shall then pay to the trustees for the general purpose of this agreement and plan a sum of money equal to one per cent. of the par value of such additional certificate so received.

The holders of what is known as the Delphos Trust post, twenty-five per cent. payment amounting to about three hundred thousand dollars, parties hereto, shall be entitled to receive at the time of signing, trustees' certificates exchangeable when presented in sums of one hundred dollars, or multiples thereof, for preferred stock of the new company, when issued for an amount equal to five-eighths of the face of the obligations or receipts held by them, excluding interest, provided they shall pay on signing one per cent. of the par value of such preferred stock for the general purposes of this agreement and plan.

33 Common stock.—The said company shall create and deliver to the trustees common capital stock to the amount of five million dollars. Holders of the preferred or common stock of the consolidated company and holders of stock of either of said companies, mortgagors, may subscribe for such common stock to the amount of one-fourth of their holding of the above-mentioned common or preferred stock, paying at the time of such subscription not less than two dollars and fifty cents, nor more than five dollars per share, as may then be determined by the trustees, for each share of stock so subscribed for, and receiving trustees' certificates calling for shares when issued.

Such stockholders shall have the exclusive right to subscribe for the new common stock for the period of thirty days after such notice as the trustees may think proper to give by publication or otherwise.

At the expiration of thirty days above mentioned, the parties to this agreement shall have the exclusive right for ten days to subscribe for the new common stock, on paying five dollars per share at the time of subscription. The common or preferred stock not subscribed for as above provided may be disposed of by the trustees in their discretion, for the general purposes of this agreement and plan of organization.

All moneys paid in for subscriptions to common or preferred stock, with any interest that may have been allowed by the trust company, to be returned in the event of the failure to create the new company as provided in this agreement.

If any bondholders shall fail to avail themselves of the privilege of becoming a party to this agreement within such time as the trustees may in their discretion limit for that purpose, the trustees are authorized to use and dispose of all the securities that would have been deliverable to such non-assenting bondholder or bondholders had he or they assented, for the purpose of providing that part of the purchase-money necessary to pay any dividend payable out of the proceeds of sale in respect of such non-assenting bonds. All surplus bonds and shares, that is, all over and above the amount

subscribed for and taken under this plan and agreement, shall be disposed of by the trustees for the general purpose of this agreement and plan of organization, and the benefit of the new company.

In witness whereof, we, the undersigned, have, on this 9th day of April, in the year 1884, hereunto set our names.

34 (Endorsement:) Circuit court of the U. S. northern dist. of Ohio, west. div. Continental Trust Company of the City of New York, etc., complainant, *vs.* Toledo St. Louis & Kansas City R. R. Co., *et al.* respondents. In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company. Exhibit. A. Filed. May 28, 1900. Irvin Belford, clerk. Clarence Brown, solicitor for receiver, Toledo, O.

"B."

Memorandum of agreement made this the eighteenth day of December, 1885, between James M. Quigley, of the first part, who is chairman of the trustees for the first-mortgage bondholders of the Toledo, Delphos and Burlington Railroad Company—main line, and chairman of the trustees of the first-mortgage bondholders of the Toledo, Cincinnati and St. Louis Railroad Company—St. Louis division; and also chairman of the bondholders' committee—said committee being composed of all the trustees aforesaid acting together; and Sylvester H. Kneeland, and his associates, of the second part.

Witnesseth: That whereas, the party of the first part on behalf of the bondholders represented and for the purpose of carrying into effect as near as may be a certain trust agreement dated April 9th, 1884, has agreed as follows, with the said party of the second part, to wit:

The said party of the second part agrees for and on behalf of the party of the first part to attend the sale at Indianapolis of the aforesaid railroads mentioned, on the 30th day of December, instant, and to purchase said property under the terms of said sale and to comply with said terms, and to advance the money that may be necessary, namely eighty-five thousand dollars; and the party of the first part agrees that all the bonds represented by him shall be at the disposal of the party of the second part to pay for the property so purchased, should the same be necessary.

The party of the second part, having offered to take the property upon certain terms and to create certain corporations and deliver certain securities to the trustees aforesaid to be delivered by
35 them to the holders of first-mortgage bonds and in lieu thereof, and for other purposes—Now, if said offer shall be accepted, then and in that event the carrying out of that contract is the end of this. But if said offer shall not be accepted, then and in that event the party of the first part agrees that he will, within twelve days from and after said sale, return to the party of the second part all moneys advanced and expended by him and all sums

for which he may have become liable in and about this business, together with a reasonable compensation for his own time and trouble.

And it is further agreed that the offer aforesaid made, or any offer to be made, by the party of the second part as to creating the corporations and delivering new securities, must be accepted or rejected by the party of the first part on or before twelve o'clock noon, of Saturday the 9th day of January, 1886, at the office of the party of the second part; and if said offer is not at that time formally rejected, and if the said money is not refunded at the time specified, then and in that event the said offer shall be considered as accepted, and the party of the second part shall carry the same into effect.

In testimony whereof, witness our hands and seals on the day and date above written.

JAMES M. QUIGLEY, [L. S.]
SYLVESTER H. KNEELAND. [L. S.]

Witness-:
I. NEWTON BAKER.
R. G. INGERSOLL.

(Endorsement:) Circuit court of the U. S. northern dist. of Ohio, west. div. Continental Trust Company of the City of New York, etc., complainant, *vs.* Toledo, St. Louis and Kansas City R. R. Co. *et al.*, respondents. In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis & Kansas City Railroad Company. Exhibit. B. Filed. May 28, 1900. Irvin Belford, clerk. Clarence Brown solicitor for receiver. Toledo, Ohio.

36

EXHIBIT C.

This agreement made and entered into by and between James M. Quigley, Halsey J. Boardman and Warren D. Hobbs, trustees for the first-mortgage bondholders of the Toledo, Cincinnati & St. Louis Railroad Company, a corporation of the States of Indiana and Illinois, owning a line of railroad extending from Kokomo, Indiana, to East St. Louis, in the State of Illinois, acting under a deed of trust bearing date April 9th, 1884, parties of the first part, and Sylvester H. Kneeland, for himself and associates, party of the second part.

37 Witnesseth, whereas, the division of the Toledo, Cincinnati & St. Louis railroad, running from Kokomo, Indiana, to East St. Louis, Illinois, together with all its property and franchises, was on the 30th day of December, 1885, on an order of sale issued out of the circuit court of the United States for the district of Indiana by virtue of a *deed* rendered in a case wherein The Central Trust Company of New York, E. T. Leonard, James M. Quigley and others were complainants, and The Toledo, Cincinnati & St. Louis Railroad Company of Ohio, Indiana and Illinois were defendants, duly sold; and

Whereas, Sylvester H. Kneeland, party of the second part, became the purchaser at said sale, under a certain contract bearing date

December 18th, 1885, between James M. Quigley, chairman, etc., of the first part, and Sylvester H. Kneeland and his associates, of the second part; and,

Whereas, the said party of the second part became and was also on the said 30th day of December, 1885, the purchaser under the said contract of December 18th, 1885, of the Toledo division of the Toledo, Cincinnati & St. Louis railroad, running from Toledo, Ohio, to Kokomo, Indiana, together with all its property and franchises, the same having been sold by virtue of a decree rendered in the suit of The Central Trust Company of New York, James M. Quigley, Charles T. Harbeck, and John McNab, complainants, and The Toledo, Delphos & Burlington Railroad Company of Ohio and Indiana, and other-, defendants, in the United States court for the district of Indiana; and,

Whereas, the two railroads, or said two mortgage divisions, so purchased, together run and extend from the city of Toledo, Ohio, to the city of East St. Louis, Illinois, running through the States of Ohio, Indiana, and Illinois, forming a continuous line of railway about four hundred and fifty miles in length, the Toledo, Cincinnati & St. Louis railroad or division extending from Kokomo, Indiana, to East St. Louis, Illinois, and the Toledo, Delphos & Burlington railroad or division extending from Toledo, Ohio, to Kokomo, Indiana; and,

Whereas, the parties of the first part representing first-mortgage bondholders, subscribers to the deed of trust aforesaid, have determined as the most available method to secure the best results for such subscribers, to transfer all their right, title and interest in the said road or division extending from Kokomo, Indiana, to East St. Louis, in the State of Illinois, and to sell and transfer all the
38 first-mortgage bonds held by said first party secured by mortgage on said division from Kokomo to East St. Louis, to the party of the second part upon the conditions and for the considerations hereinafter specifically mentioned.

Now, therefore, in consideration of the premises and for the considerations hereinabove and hereinafter mentioned the said party of the second part hereby covenants and agrees to and with the said parties of the first part that he and his associates will complete the said purchases in accordance with the terms of the said decrees and that he and his associates will as soon as proper notices can be given and the laws in that behalf complied with, proceed to form under the laws of the State of Ohio a railroad corporation to be called and named, —— of Ohio, with a capital stock of, —— and a like corporation under the laws of the State of Indiana, to be named and called —— of Indiana, with a capital stock of —— and a like corporation under the laws of the State of Illinois, to be named and called, —— of Illinois, with a capital stock of —— and the party of the second part hereby agrees that he will deed to the said corporation to be created in the State of Ohio, all that part of said railroad that lies in said State, provided said party of the second part shall make and execute an agreement with the trustees for first-mortgage bondholders of the line from Toledo to Kokomo, subscribers to the

trust deed of April 9, 1884, substantially of even tenor and effect with this agreement, which said second party shall obtain the transfer of said line and property from Kokomo to Toledo, and purchase from said trustees the first-mortgage bonds represented by them secured by mortgage upon said divisions from Kokomo to Toledo and to the corporation to be created in the State of Indiana he will deed that portion of said line situated in said State, and to the corporation to be formed in Illinois, the part of said line lying and being in that State and the said party of the second part for himself and associates hereby covenants and agrees that he will as soon as practicable after the formation of the said three corporations consolidate the same by virtue of and in accordance with the laws of the said several States, said consolidated corporation to be called ——.

And it is further agreed between the parties hereto, that the said consolidated company so to be created, may and shall issue its bonds to the amount of twenty thousand dollars per mile of line owned by the said consolidated company including any additional line
39 that may be built, commencing at or near Dupont, in the State of Ohio, and extending to a point at or near Decatur, in the State of Indiana, within the termini aforesaid, such bonds to be of the denomination of one thousand dollars each, payable thirty years after date, with interest at the rate of six per cent. per annum, payable semi-annually, principal and interest, in gold, in the city of New York and secure the same by a deed of trust covering all of said consolidated road, its property and franchises, the entire line herein described, as well as all property of all kinds to be thereafter acquired by said consolidated company, and shall issue in addition common stock to the amount of twenty-five thousand dollars per mile and the said bonds and stock so issued shall be deposited with two trustees, one to be selected by said party of the second part, and one by the parties of the first part, including the trustees for the first-mortgage bondholders of the Toledo, Delphos & Burlington railroad, or the division extending from Toledo, Ohio, to Kokomo, Indiana, and by said trustees to be delivered to the party of the second part upon the conditions and for the considerations and to effect and carry out the purposes hereinabove and hereinafter mentioned and set forth.

The said party of the second part for himself and his associates hereby contracts and agrees that the said consolidated company so to be formed as aforesaid will as soon as formed proceed without unnecessary delay to change the gauge of the railroad herein mentioned extending from Toledo, Ohio, to East St. Louis, Illinois, so that the same shall be of the standard gauge, it being now what is called "a narrow-gauge" road, and lay down steel rails of not less than sixty pounds to the yard, main line, widen all embankments and cut to the requisite width, widen, strengthen and rebuild bridges if the same may be necessary, construct all necessary stations, tanks, repair shops and sidings so that the said road reaching from Toledo, Ohio, to East St. Louis, Illinois, shall be in all respects a first-class road of standard gauge.

And further, the said party of the second part, for himself and associates agrees that the said consolidated company shall equip said road with all necessary cars of every description and with the requisite motive power and agrees that he will use the proceeds of at least four of said first-mortgage bonds per mile of road, in the purchase of said equipment.

And it is further agreed by and between the parties hereto, that of the bonds so to be issued by the said consolidated com-
40 pany, the trustees so to be selected as aforesaid shall as soon as said bonds are issued, deliver to the party of the second part two thousand of said bonds of one thousand dollars each, and shall also deliver to the said party of the second part twenty-five thousand shares of the common capital stock of the said consolidated company of the par value of one hundred dollars per share hereinafter provided for, as soon as the same is issued, said bonds and said stock to be used by the said party for the purposes set forth in this contract.

And it is further agreed between the said parties, that as fast as said rolling stock is placed upon the line, bonds of the said consolidated company shall be delivered by said trustees, so to be chosen as aforesaid, to the said party of the second part, to the amount of the value of such rolling stock, and as fast as said work of completing said road, buildings, structures and appliances progresses under and in accordance with this contract of changing the gauge and furnishing materials necessary, the said trustee shall deliver to the party of the second part the said first-mortgage bonds and stock to the value under this contract of such work done or materials furnished, the value thereof to be certified in writing by the chief engineer of the said consolidated company.

And it is further agreed by and between the parties hereto, that the common capital stock of the said consolidated railroad company shall be an amount equivalent to twenty-five thousand dollars per mile of line, and no more, said common capital stock to be divided into shares of one hundred dollars each, and said stock shall be immediately issued and deposited with the trustees, to be chosen as aforesaid, and is to be delivered upon the same conditions and for the same considerations that the said first-mortgage bonds are to be delivered, the party of the said second part hereby contracting and agreeing to do and perform the things herein stipulated to be done and performed by said second party for and in consideration of said first-mortgage bonds, and said common stock, and for and in consideration of said original first-mortgage bonds, held by said first parties under said trust deed, as hereinbefore set forth, having agreed to do the things mentioned herein, in consideration of said first-mortgage bonds, and of said common stock, among other things.

And it is further agreed that the consolidated company, immediately upon being and becoming lawfully authorized to issue stock, shall issue its coupon non-voting convertible stock, prepared
41 for registry to a name or to bearer, in shares of one hundred dollars each, to the amount of $5,805,000, having coupons attached payable semi-annually at the rate of 4 per cent. per annum,

if earned in whole, or in part, to the extent earned, and covering ten years from January 1, 1888, namely, twenty coupons.

Whenever the net earnings of the road for the period covering a coupon are not sufficint to pay the same, then the holder of such coupons shall surrender them on receiving their *pro rata* share of such net earnings as there may be for that period. Said coupon convertible stock to be convertible after five years from date of issue at the pleasure of the holder into common stock of the company, and if not converted in ten years from date of issue, to become a preferred four per cent., non-cumulative, non-voting stock. Four million eight hundred and five thousand dollars of said issue to be used and disposed of as follows: To the parties of the first part ten shares of said coupon stock for each $1,000 first-mortgage bond turned over to the said party of the second part, and the company shall turn over to the said parties of the first part, on their order, the balance of the coupon convertible stock that would have been deliverable to such trustees had they represented the entire issue of first-mortgage bonds, upon the furnishing by them to said company, with a certificate of the clerk of the court that the money sufficient to cover said balance had been duly deposited in court by the said parties of the first part. And the remaining $1,000,000 of said non-voting, coupon, convertible stock, after providing for the amount to be delivered to the trustees for the Toledo division before mentioned, shall be deposited in the hands of the said two trustees, to be delivered to the party of the second part for use in compromising, adjusting and settling claims and suits now existing and pending, or suits that may hereafter be brought against the said lines of the said consolidated company. And such amount of said stock shall be issued by said trustees to the party of the second part upon his furnishing vouchers to them showing for what purposes or claims said stock has been or is to be used. And such balance as remains, if any, shall be subject to the order of said consolidated company, and no other coupon stocks or bonds of indebtedness shall be issued for any purpose except for the acquiring of additional road, and then only with the consent of a two-thirds vote of the coupon stock present at a meeting called for the purpose, after due notice shall have been given to all holders of record and published at
42 least once a week for three successive weeks in two daily leading newspapers in the cities of Boston and New York.

And it is further agreed between the parties hereto that if the party of the second part fails to make the committee or trustees, representing under the deed of trust of April 9, 1884, before mentioned, the 1st-mortgage bondholders of the Toledo, Delphos and Burlington Railroad Company; that is to say, the division between Toledo, Ohio, and Kokomo, Indiana, a contract for the purchase of said division and of the original first-mortgage bonds upon said division, now held by said committee and trustees under said trust deed hereinbefore mentioned, then and in that event the said party of the second part agrees to form a corporation in the State of Indiana as aforesaid, and a corporation in the State of Illinois as aforesaid, and convey the said road and property from Kokomo, Indiana,

to East St. Louis, Illinois, to said corporations respectively, and agrees, as soon as practicable, to consolidate the said two corporations, and first-mortgage bonds for the same amount per mile as herein mentioned and common stock to the same amount per mile as herein mentioned, shall be issued by the said consolidated company and delivered to two trustees, one to be chosen by the parties of the first part, and one by the party of the second part, and by said trustees to be delivered to the party of the second part, upon the same terms and conditions and for the same considerations as hereinbefore stated, and the party of the second part shall give the same considerations therefor, and shall equip said line from Kokomo to East St. Louis in all respects as hereinbefore provided for said entire line from Toledo to East St. Louis, and shall buy rolling stock and motive power in the same proportion per mile; and the said last-mentioned consolidated company shall issue the said coupon stock for said bonds, as aforesaid, to be turned over to the party of the second part and six hundred thousand dollars of the additional coupon stock for the same purpose, and with the same power to issue additional coupon stock for the acquiring of new lines, provided the holders of a majority of the coupon stock shall consent thereto in manner and form as hereinbefore provided, and of the two millions in bonds and the two and one-half millions in stock to be delivered immediately to the party of the second part, there shall instead thereof be delivered twelve hundred thousand dollars in bonds and one and one-half millions in stock for the purposes mentioned.

43 But it is also agreed and understood that if at any time within — the said party of the second part and his associates shall acquire the said line from Toledo, Ohio, to Kokomo, Indiana, then and in that event this contract with regard thereto shall be in full force and effect.

It is further agreed between the parties hereto, that the said parties of the first part will, at the request of the party of the second part, litigate any and all claims that the said party of the second part may wish to resist, and will sign all papers that may be necessary in the defense of such claims, and will do all acts and things necessary and proper to be done for the defense thereof, at the expense of the party of the second part, said party of the second part having the right to select all attorneys and agents to act in that behalf, the said party of the second part to be at the expense of all such litigation.

And it is further agreed that the said party of the second part shall have the right to use and pledge any of said property and securities for the purpose of procuring bonds and bondsmen that may be necessary to give or procure in the litigation of said claims, or of any suits growing out of the foreclosure proceedings herein on the sale or sales thereunder before the creation of said consolidated company.

And it is further agreed between the parties that the said parties of the first part, who have acted as trustees under the said deed of trust, bearing date April 9, 1884, are entitled as compensation for

services rendered and expenditures made in this behalf, as follows: Such sums as may be mutually agreed upon between the parties hereto.

And it is further agreed between the parties hereto, that the said party of the second part shall complete and equip, according to the provisions of this agreement, and deliver said line of railroad to said new proposed consolidated company, on or before the first day of July, A. D. 1888, and in the event of his failure so to do, all his rights under this contract shall terminate; provided, however, that if he shall encounter unfor-seen obstacles, and without his fault, said trustees to be appointed hereunder shall extend said time for a period not exceeding twelve months from said July 1, A. D. 1888.

And it is further agreed between the parties hereto, in cases where in this contract it is provided that two trustees shall act, that where these trustees fail to agree they shall choose a third, and the decision of any two shall be final and binding upon all parties, with the exception hereinafter mentioned.

44 And it is further agreed, that in the event of any change in this agreement becoming necessary or expedient in the interest of all concerned, such change may be made by the concurrent unanimous action of said two original trustees and the said party of the second part.

And it is hereby further agreed by the parties of the first part that upon the due and legal execution and delivery of this contract in triplicate, one to be delivered to each party thereto, and one to be delivered to the trustees for the Toledo division hereinbefore described, and upon the performance by said party of the second part of the terms and conditions of purchase of said St. Louis division from Kokomo to East St. Louis, in full compliance with the terms, conditions and stipulations of the decree under which the said purchase was made, that the said parties of the first part will deliver to the said party of the second part the original first-mortgage bonds upon said St. Louis division, held by said parties of the first part under said trust agreement, so that, and for the purpose of enabling said party of the second part to use the same in paying that part of the purchase-money bid for said division, properly payable with said bonds as provided by the decree.

It is also agreed that the said consolidated company shall, during the period of construction, use all of its net earnings to make any betterments and permanent improvements that may be deemed desirable, and the party of the second part shall furnish any and all money that may be necessary to pay all interest that may accrue on said first-mortgage bonds as the same falls due.

The said party of the second part hereby agrees to pay all expenses that may have been legally incurred by said parties of the first part in this behalf, including all legal expenses for suits commenced or pending, and all other expenses in this behalf which may not be paid by order of the court out of any fund arising from the sale of said property.

In the event of the death or resignation of the trustees appointed by the parties of the first part, his successor may and shall be ap-

pointed by James M. Quigley, Halsey J. Boardman and Chas. T. Harbeck or a majority of them—and in the event of the death or resignation of the trustee appointed by the party of the second part, his successor may be appointed by the party of the second part.

In testimony whereof the said parties have hereunto set their hands and seals this twenty-third day of January, A. D. 1886.

(Signed) JAMES M. QUIGLEY.
HALSEY J. BOARDMAN.
WARREN D. HOBBS.

45 In presence of

The words from "after" to mentioned inclusive, being interlined on the twelfth page before execution.

H. A. KINGSBURY.

SYLVESTER H. KNEELAND,
For Himself and Associates.

STATE OF NEW YORK, }
City and County of New York, } ss:

On the 23d day of January, A. D. 1886, before me personally appeared James M. Quigley, Halsey J. Boardman, Warren D. Hobbs and Sylvester H. Kneeland, all to me known and known to me to be the persons described in and who executed the foregoing instrument and severally acknowledged to me that they executed the same.

Witness my hand and notarial seal at said city of New York, the day last aforesaid.

[SEAL.] H. A. KINGSBURY,
Notary Public, N. Y. Co.

(Endorsement:) United States circuit court for the northern district of Ohio, western division. Continental Trust Company of the City of New York, complainants, against Toledo, St. Louis and Kansas City Railroad Company *et al.*, respondents. In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company. Exhibit. C. Clarence Brown, solicitor for receiver, Toledo, Ohio. Filed. May 28, 1900. Irvin Belford, clerk.

46 EXHIBIT D.

This agreement made and entered into by and between James M. Quigley, Charles T. Harbeck and John McNab, trustees for the first-mortgage bondholders of the Toledo, Delphos & Burlington Railroad Company of Ohio and Indiana, owning a line of rail-
47 road extending from Toledo, Ohio, to Kokomo, Indiana, commonly known as the Toledo division of the Toledo, Cincinnati and St. Louis railroad, acting under a deed of trust bearing date April 9th, 1884, parties of the first part, and Sylvester H. Kneeland for himself and associates, party of the second part.

Witnesseth: Whereas, the Toledo division of the Toledo, Cincinnati & St. Louis Railroad Company, running from Toledo, Ohio, to Kokomo, Indiana, together with all its property and franchises, was on the thirteenth day of December, 1885, in the suit of The Central Trust Company of New York, James M. Quigley, Charles T. Harbeck and John McNab, complainants, and The Toledo, Delphos & Burlington Railroad Company, of Ohio and Indiana, and others, defendants, sold under a decree of the United States court for the district of Indiana in said cause rendered; and,

Whereas, Sylvester H. Kneeland, party of the second part, became the purchaser at said sale under a certain contract, bearing date December 18th, 1885, between James M. Quigley, chairman, etc., of the first part, and Sylvester H. Kneeland and his associates, of the second part; and,

Whereas, the said party of the second part became and was, also on the said 30th day of December, 1885, the purchaser, under the said contract of December 18, 1885, of the property and franchises of the Toledo, Cincinnati & St. Louis Railroad Company, that is to say, of the division extending from Kokomo, Indiana, to East St. Louis, Illinois, commonly known as the St. Louis division, on an order of sale issued out of the circuit court of the United States for the district of Indiana, upon a decree rendered in a cause wherein The Central Trust Company of New York, E. F. Leonard, James M. Quigley and others, were complainants, and The Toledo, Cincinnati & St. Louis Railroad Company of Ohio, Indiana and Illinois were defendants; and,

Whereas, the two railroads, or said two mortgage divisions, so purchased together run and extend from the city of Toledo, Ohio, to the city of East St. Louis, Illinois, running through the States of Ohio, Indiana and Illinois, forming a continuous line of railway about four hundred and fifty miles in length, the Toledo, Delphos & Burlington railroad or division, extending from Toledo, Ohio, to Kokomo, Indiana, and the Toledo, Cincinnati & St. Louis railroad or division, extending from Kokomo, Indiana, to East St. Louis, Illinois; and

48 Whereas, the parties of the first part, representing first-mortgage bondholders, subscribers to the deed of trust of April 9th, 1884, aforesaid, have determined as the most available method to secure the best results for such subscribers to transfer all their right, title and interest in the said road or division, extending from Toledo, Ohio, to Kokomo, Indiana, and to sell and transfer all the first-mortgage bonds held by said parties of the first part secured by mortgage on said division from Toledo to Kokomo, to the party of the second part, upon the conditions and for the considerations hereinafter specifically mentioned.

Now, therefore, in consideration of the premises and for the considerations hereinabove and hereinafter mentioned, the said party of the second part hereby covenants and agrees to and with the said parties of the first part, that he and his associates will complete the said purchases in accordance with the terms of the said decrees, and that he and his associates will as soon as the proper notice can be

given and the laws in that behalf can be complied with, proceed to form under the laws of the State of Ohio, a railroad corporation to be called and named the —— of Ohio, with a capital stock of ——, and a like corporation under the laws of the State of Indiana, to be named and called the —— Indiana, with a capital stock of ——, and a like corporation under the laws of the State of Illinois, to be named and called the —— of Illinois, with a capital stock ——, and the party of the second part hereby agrees that he will deed to the said corporation to be created in the State of Ohio, all that part of said railroad that lies in said State, and to the corporation to be created in the State of Indiana he will deed that portion of said line situate in said State, and to the corporation to be formed in Illinois the part of said line lying and being in that State, provided said party of the second part shall make and execute with the trustees for the first-mortgage bondholders of the line from Kokomo to East St. Louis, subscribers to the trust deed of April 9th, 1884, and agreement substantially of even tenor and effect with this agreement by which said party shall obtain the transfer of said line and property from Kokomo to East St. Louis, and purchase from said trustees the first-mortgage bonds represented by them secured by mortgage on said division from Kokomo to East St. Louis, and the said party of the second part, for himself and associates, further covenants and agrees that he will as soon as practicable after the formation of the said three corporations, consolidate the same by virtue of and
49 in accordance with the laws of the said several States, said consolidated corporation to be called ——.

And it is further agreed between the parties hereto that the said consolidated company so to be created may and shall issue its bonds to the amount of twenty thousand dollars per mile of line owned by the said consolidated company, including any additional line that may be built commencing at or near Dupont, in the State of Ohio, and extending to a point at or near Decatur, in the State of Indiana, within the termini aforesaid, such bonds to be of the denomination of one thousand dollars each, payable thirty years after date with interest at the rate of six per cent. per annum, payable semi-annually, principal and interest in gold, in the city of New York, and secure the same by a deed of trust covering all of said consolidated road, its property and franchises, the entire line herein described, as well as all property of all kinds, to be thereafter acquired by said consolidated company, and issue in addition common stock to the amount of twenty-five thousand dollars per mile, and the said bonds and stock so issued shall be deposited with two trustees, one to be selected by the said party of the second part, and one by the parties of the first part, including the trustees for the first-mortgage bondholders of the Toledo, Cincinnati & St. Louis Railroad Company of the division extending from Kokomo, Ind., to East St. Louis, Illinois, and by said trustees to be delivered to the party of the second part upon the conditions and for the considerations, and to effect and carry out the purposes hereinabove and hereinafter mentioned and set forth.

The said party of the second part, for himself and his associates

hereby contracts and agrees that the said consolidated company so to be formed as aforesaid will as soon as formed proceed without unnecessary delay to change the gauge of the railroad herein mentioned extending from Toledo, Ohio, to East St. Louis, Illinois, so that the same shall be of the same standard gauge, it being now what is called a "narrow-gauge" road, and lay down steel rails of not less than sixty pounds to the yard, main line, widen all embankments and cuts to the requisite width, widen, strengthen and rebuild bridges as the same may be necessary, construct all necessary stations, tanks, houses, repair shops and sidings, so that the said road reaching from Toledo, Ohio, to East St. Louis, Illinois, shall be in all respects a first-class road of standard gauge.

50 And further the said party of the second part, for himself and associates, agrees that the said consolidated company shall equip said road with all necessary cars, of every description, and with the requisite motive power, and agrees that he will use the proceeds of at least four of said first-mortgage bonds per mile of road in the purchase of said equipment.

And it is further agreed by and between the parties hereto, that of the bonds so to be issued by the said consolidated company, the trustees so to be selected as aforesaid, shall as soon as said bonds are issued, deliver to the party of the second part two thousand of said bonds of one thousand dollars each, and shall also deliver to the said party of the second part twenty-five thousand shares of the common capital stock of the said consolidated company, of the par value of one hundred dollars per share, hereinafter provided for, as soon as the same is issued; said bonds and said stock to be used by the said party for the purposes set forth in this contract.

And it is further agreed between the said parties that as fast as said rolling stock is placed upon the line bonds of the said consolidated company shall be delivered by said trustees so to be chosen as aforesaid, to the said party of the second part, to the amount of the value of such rolling stock, and as fast as said work of completing said road, buildings, structures and appliances, progresses under and in accordance with this contract of changing the gauge and furnishing the materials necessary, the said trustees shall deliver to the party of the second part the said first-mortgage bonds and stock to the value under this contract of such work done or materials furnished, the value thereof to be certified in writing by the chief engineer of the said consolidated company.

And it is further agreed by and between the parties hereto that the common capital stock of the said consolidated railroad company shall be an amount equivalent to twenty-five thousand dollars per mile of line, and no more, said common capital stock to be divided into shares of one hundred dollars each, and said stock shall be immediately issued and deposited with the trustees to be chosen as aforesaid, and is to be delivered upon the same conditions and for the same considerations that the said first-mortgage bonds are to be delivered, the party of the second part hereby contracting and agreeing to do and perform the things herein stipulated to be done and performed by said party of the second part for and in consideration

of said first-mortgage bonds and said common stock, and for
51 and in consideration on such original first-mortgage bonds held by the parties of the first part under such trust deed as hereinabove set forth, the said party of the second part having agreed to do the things mentioned herein in consideration of said first-mortgage bonds and of said common stock, among other things.

And it is further agreed that the said consolidated company shall issue its coupon non-voting stock in shares of one hundred dollars each, bearing interest at the rate of four per cent. per annum, payable semi-annually, if earned, and shall exchange said coupon stock for the first-mortgage bonds represented by the parties of the first part, and shall for each bond of one thousand dollars give to the holder thereof fifteen hundred dollars in said coupon stock, said stock convertible at the option of the railroad company shall be an amount equivalent to twenty-five thousand dollars per mile of line and no more, said common capital stock to be divided into shares of one hundred dollars each, and said stock shall be immediately issued and deposited with the trustees to be chosen as aforesaid, and is to be delivered upon the same conditions and for the same considerations that the said first-mortgage bonds are to be delivered, the party of the second part hereby contracting and agreeing to do and perform the things herein stipulated to be done and performed by said second party for and in consideration of said first-mortgage bonds, and said common stock, and for and in consideration of said original first-mortgage bonds held by said first parties under said trust deed as hereinbefore set forth, having agreed to do the things mentioned herein in consideration of said first-mortgage bonds, and of said common stock, among other things.

And it is further agreed that the consolidated company immediately upon being and becoming lawfully authorized to issue stock shall issue its coupon non-voting convertible stock prepared for registry to a name or to bearer in shares of one hundred dollars each, to the amount of $5,805,000, having coupons attached payable semi-annually at the rate of four per cent. per annum, if earned, in whole or in part, to the extent earned, and covering ten years from January 1st, 1888, namely, twenty coupons.

Whenever the net earnings of the road for the period covering a coupon are not sufficient to pay the same, then the holders of such coupons shall surrender them on receiving their *pro rata* share of such net earnings as there may be for that period. Said coupon convertible stock to be convertible after five years from date of issue at the pleasure of the holder, into common stock of the company, and if not converted in ten years from date of issue, to be-
52 come a preferred four per cent. non-cumulative, non-voting stock, $4,805,000 of said issue to be used and disposed of as follows: To the parties of the first part fifteen shares of said coupon stock for each one thousand dollars first-mortgage bond turned over to the said party of the second part, and the company shall turn over to the said parties of the first part, or their order, the balance of the coupon convertible stock that would have been deliverable to such trustees had they represented the entire issue of first-mortgage

bonds, upon the furnishing by them to said company with a certificate of the clerk of the court that the money sufficient to cover said balance has been duly deposited in court by the said parties of the first part.

And the remaining $1,000,000 of said non-voting coupon convertible stock, after providing for the amount to be delivered to the trustees for the first-mortgage bondholders of the St. Louis division before mentioned, shall be deposited in the hands of said two trustees to be delivered to the party of the second part for use in compromising, adjusting and settling claims and suits now existing and pending, or suits that may hereafter be brought against the said lines, or the said consolidated company.

And such amount of said stock shall be issued by said trustees to the party of the second part upon his furnishing vouchers to them showing for what purposes or claims said stock has been or is to be used.

And such balance as remains, if any, shall be subject to the order of said consolidated company, and no other coupon stocks or bonds of indebtedness shall be issued for any purpose except for the acquiring of additional road, and then only with the consent of a two-thirds vote of the coupon stock present at a meeting called for the purpose, after due notice shall have been given to all holders of record, and published at least once a week for three successive weeks in two daily leading newspapers in the cities of Boston and New York.

It is further agreed between the parties hereto that if the party of the second part fails to make with the committee or trustees, representing under the deed of trust of April 9th, 1884, before mentioned, the first-mortgage bondholders of the Toledo, Cincinnati & St. Louis Railroad Company, that is to say, the division between Kokomo, Indiana, and East St. Louis, Illinois, a contract for the purchase of said division and of the original first-mortgage bonds upon said division, now held by said committee and trustees under said trust deed hereinbefore mentioned, then and in that event the said party of the second part, agrees to form a corporation in
53 the State of Ohio, as aforesaid, and a corporation in the State of Indiana as aforesaid, and convey the said road and property from Toledo, Ohio, to Kokomo, Indiana, to said corporations respectively, and agrees as soon as practicable to consolidate the said two corporations and first-mortgage bonds for the same amount per mile as herein mentioned, and common stock to the same amount per mile as herein mentioned shall be issued by the said consolidated company and delivered to two trustees, one to be chosen by the parties of the first part, and one by the party of the second part, and by said trustees to be delivered to the party of the second part upon the same terms and conditions and for the same considerations as hereinbefore stated, and the party of the second part shall give the same considerations therefor, and shall equip said line from Toledo to Kokomo in all respects as hereinbefore provided for said entire line from Toledo to East St. Louis, and shall buy rolling stock and motive power in the same proportion per mile, and the said

last-mentioned consolidated company shall issue the said coupon stock for said bonds as aforesaid, to be turned over to the party of the second part and four hundred thousand dollars of the additional coupon stock for the same purposes, and with the same power to issue additional coupon stock for the acquiring of new line, provided the holders of a majority of the coupon stock shall consent thereto in manner and form as hereinbefore provided, and of the two millions in bonds, and the two and a half millions in stock to be delivered immediately to the party of the second part, there shall instead thereof be delivered eight hundred thousand dollars in bonds and one million in stock for the purposes mentioned.

But it is also agreed and understood that if at any time within —— the said party of the second part, and his associates, shall acquire the said line from Kokomo, Indiana, to East St. Louis, Illinois, then in that event, this contract with regard thereto, shall be in full force and effect.

It is further agreed, between the parties hereto, that the said parties of the first part will, at the request of the party of the second part, litigate any and all claims that the said party of the second part may wish to resist, and will sign all papers that may be necessary in the defense of such claims, and will do all acts and things necessary and proper to be done for the defense thereof at the expense of the party of the second part, and party of the second part having the right to select all attorneys and agents to act in that behalf, the said party of the second part to be at the expense of all such litigation.

54 And it is further agreed that the said party of the second part shall have the right to use and pledge any of said property and securities for the purpose of procuring bonds and bondsmen that may be necessary to give or procure in the litigation of said claims, or of any suits growing out of the foreclosure proceedings herein, or the sales thereunder before the creation of said consolidated company.

And it is further agreed between the parties hereto, that the said parties of the first part, who have acted as trustees under the said deed of trust bearing date April 9th, 1884, are entitled as compensation for services rendered and expenditures made in this behalf as follows:

Such sums as may be mutually agreed upon between the parties hereto.

And it is further agreed, between the parties hereto, that the said party of the second part shall complete and equip, according to the provisions of this agreement, and deliver said line of railroad to said new proposed consolidated company on or before the first day of July, A. D. 1888, and in the event of his failure so to do, all his rights under this contract shall terminate, provided, however, that if he shall encounter unforeseen obstacles and without his fault, said trustees to be appointed hereunder shall extend said time for a period not exceeding twelve months from said July 1st, A. D. 1888.

And it is further agreed, between the parties hereto, in cases where in this contract, it is provided that two trustees shall act, that where these trustees fail to agree they shall choose a third, and the

decision of any two shall be final and binding upon all parties with the exception hereinafter named.

And it is further agreed that in the event of any change in this agreement becoming necessary or expedient, in the interests of all concerned, such change may be made by the concurrent unanimous action of said two original trustees and the said party of the second part.

And it is further agreed by the parties of the first part that upon the due and legal execution and delivery, of this contract in triplicate, one to be delivered to each party hereto, and one to be delivered to the trustees for the St. Louis division hereinbefore described, and upon the performance by said party of the second part of the terms and conditions of purchase of said St. Louis division from Kokomo to East St. Louis, in full compliance with the terms, conditions and stipulations of the decree under which said purchase was made, that the said parties of the first part will
55 deliver to the said party of the second part the original first-mortgage bonds upon said St. Louis division held by said parties of the first part under said trust agreement so that and for the purpose of enabling said party of the second part to use the same in paying that part of the purchase-money bid for said division property, payable with said bonds as provided by the decree.

It is also agreed that the said consolidated company shall during the period of construction use all its net earnings to make any betterments and permanent improvements that may be deemed desirable, and the party of the second part shall furnish any and all money that may be necessary to pay all interest that may accrue on said first-mortgage bonds as the same falls due.

The said party of the second part hereby agrees to pay all expenses that have been legally incurred by said parties of the first part in this behalf, including all legal expenses for suits commenced or pending, and all other expenses in this behalf which may not be paid by order of the court out of funds arising from the sale of said property.

In the event of the death or resignation of the trustee appointed by the parties of the first part, his successor may and shall be appointed by James M. Quigley, Halsey J. Boardman, and Charles T. Harbeck, or a majority of them, and in the event of the death or resignation of the trustee appointed by the party of the second part, his successor may be appointed by the party of the second part.

In witness whereof, the said parties have hereunto set their hands and seals, this twenty-third day of January, A. D. 1886.

JAMES M. QUIGLEY.
CHARLES T. HARBECK,
Trustee, etc.

JOHN McNAB.
SYLVESTER H. KNEELAND,
For Self and Associates.

In presence of:
H. A. KINGSBURY.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On this 23d day of January, A. D. 1886, before me personally appeared James M. Quigley, John McNab and Sylvester H. Kneeland, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same for the uses and purposes therein mentioned.

56 Witness my hand and notarial seal the day and year last aforesaid.

H. A. KINGSBURY,
Notary Public, N. Y. Co.

THE STATE OF NEW YORK, }
City & County of New York, } *ss:*

On this 26 day of January, 1886, before me personally appeared Charles T. Harbeck, to me known and known to me to be one of the persons described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Witness my hand and notarial seal the day and year last aforesaid.

H. A. KINGSBURY,
Notary Public, N. Y. Co.

(Endorsement:) Circuit court of the U. S. northern dist. of Ohio, west. div. Continental Trust Company of the City of New York, etc. complainant *vs.* Toledo, St. Louis and Kansas City R. R. Co. *et al.* respondents. In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company. Exhibit D. Clarence Brown, solicitor for receiver, Toledo, Ohio. Filed May 28, 1900. Irvin Belford, clerk.

EXHIBIT "E."

This agreement, made and entered into this twelfth day of June, A. D. eighteen hundred and eighty-six, by and between Sylvester H. Kneeland, a citizen and resident of the city, county and State of New York, party of the first part herein, and the Toledo, Dupont and Western Railway Company, a corporation organized and existing under and by virtue of the statutes of the State of Ohio,

57 in that behalf enacted, and a citizen and resident of the said State of Ohio, party of the second part,

Witnesseth: Whereas, on December thirtieth, A. D. eighteen hundred and eighty-five, under and pursuant to final foreclosure decree, rendered and entered in certain causes in the circuit court of the United States for the district of Indiana, and in the circuit court of the United States for the southern district of Illinois, wherein The Central Trust Company of New York and others were complainants, and The Toledo, Cincinnati and St. Louis Railroad Company and others were defendants, all that part of the railroad and property of the Toledo, Cincinnati and St. Louis Railroad Company

extending from the city of Kokomo, Indiana, to the city of East St. Louis, Illinois, together with all the property, rights, powers, privileges, immunities and franchises thereunto belonging and appertaining, was sold at public foreclosure sale at the door of the United States circuit court room in the city of Indianapolis, Indiana, as an entirety, and

Whereas, at said foreclosure sale Sylvester H. Kneeland, party of the first part herein, became the purchaser of said railroad, property, rights, powers, privileges, immunities and franchises so sold as aforesaid, and

Whereas, on said December thirtieth, A. D. eighteen hundred and eighty-five, under and pursuant to final foreclosure decrees rendered and entered in certain causes in the circuit court of the United States, for the district of Indiana, and in the circuit court of the United States, for the northern district of Ohio, western division, wherein The Central Trust Company of New York and others were complainants, and The Toledo, Cincinnati and St. Louis Railroad Company and others, were defendants, all of that part of the railroad and property of the Toledo, Cincinnati and St. Louis Railroad Company now owned by the party of the first part extending from the city of Toledo, Ohio, to the city of Kokomo, Indiana, together with all the property, rights, powers, privileges, immunities and franchises thereunto belonging and appertaining, was sold at public foreclosure sale at the door of the United States circuit court room in the city of Indianapolis, Indiana, as an entirety, and

Whereas, at said foreclosure sale Sylvester H. Kneeland, party of the first part herein, became the purchaser of said railroad property, rights, powers, privileges, immunities and franchises so sold as aforesaid, and

Whereas on February fifth, A. D. eighteen hundred and eighty-six, the said two sales and purchases hereinabove mentioned
58 were, by proper orders and decrees entered in said causes, in all things approved and confirmed, and

Whereas, on the tenth day of March, A. D. eighteen hundred and eighty-six, good and sufficient deeds of, conveyance for said premises, railroads, properties, rights, powers, privileges, immunities and franchises, so sold at said two foreclosure sales as aforesaid, were duly executed and delivered to the said Sylvester H. Kneeland purchaser as aforesaid, in pursuance of the terms of the said foreclosure decrees and the orders and decrees of court in that behalf entered, and

Whereas, said Sylvester H. Kneeland, party of the first part herein has become, and now is, the owner and possessor by said purchases at foreclosure sale of the railway and property, rights, powers, privileges, immunities and franchises lately known as "the Toledo, Cincinnati and St. Louis railroad," extending from Toledo, Ohio, to East St. Louis, Illinois, that part of said railroad and property lying and being within the State of Ohio, being more particularly described as follows, to wit:

Beginning at a point on the west boundary line of the State of Ohio, in the county of Van Wert, in a southwesterly direction from

Willshire in said county of Van Wert, in said State of Ohio, and extending thence northeasterly through the counties of Van Wert, Allen, Putnam, Henry, Wood and Lucas, in the State of Ohio, to a point at or near the business center of the city of Toledo, in said county of Lucas, State of Ohio, and desires and intends to reorganize and reconstruct said railroad so as to make and constitute a continuous line of standard-gauge railroad from Toledo, Ohio, to East St. Louis, Illinois, upon the line, route and property of the said railroad lately known as "the Toledo, Cincinnati & St. Louis railroad," so purchased by him at said foreclosure sale as herein aforesaid, and

Whereas, at the special instance and request of the said Sylvester H. Kneeland, party of the first part herein, the said The Toledo, Dupont and Western Railway Company, party of the second party herein, has been organized and incorporated, pursuant to law, for the express purpose of, and to the end that, said railroad company, party of the second part herein, shall acquire, own, maintain, operate, use and enjoy all that part of the said railroad and property lately known as "the Toledo, Cincinnati and St. Louis railroad," lying and being within the said State of Ohio, as hereinabove described, together with all the property, rights, privileges,
59 immunities and franchises thereunto belonging and appertaining, and

Whereas, the Toledo, Dupont and Western Railway Company, party of the second part herein, is desirous of purchasing and acquiring the said railroad and franchises hereinbefore described, situated in the State of Ohio, from the said Sylvester H. Kneeland, the owner thereof, for the purpose of owning, reconstructing, maintaining and operating the same.

Now, therefore, it is hereby contracted, covenanted and agreed by and between the said party of the first part and said party of the second part:

First. That for and in consideration of the premises, and upon the receipt of the other and valuable considerations hereinafter recited, the party of the first part hereby contracts, covenants and agrees to convey to the party of the second part by a good and sufficient deed of conveyance, all the title so received by him to that part of the said railroad and property lately known as "the Toledo, Cincinnati and St. Louis railroad;" lying and being within the State of Ohio, as hereinabove described, together with all the property, rights and franchises thereunto appertaining and belonging.

Second. That for and in consideration of the premises, and upon the receipt of the other and valuable considerations hereinafter recited, and for and in consideration of the contracts, covenants and agreements of the party of the second part hereinafter recited and set forth, the said Sylvester H. Kneeland, party of the first part, hereby further contracts, covenants and agrees that he will, without delay, and as soon as the same can be conveniently and lawfully done, cause the railroad companies organized by him, or at his instance and request, under and by virtue of the statutes of the States of Indiana and Illinois, for the purpose of reorganizing, own-

ing, reconstructing, maintaining, operating, using and enjoying those portions of the line of railroad; (the title to which vested in him by virtue of the said purchase), and property lately known as "the Toledo, Cincinnati and St. Louis railroad;" lying and being within the said States of Indiana and Illinois, to consolidate with each other and with the said Toledo, Dupont and Western Railway Company, party of the second part herein, under, pursuant to and in accordance with, the statutes of the said several States of Ohio, Indiana, and Illinois, to the end that a single consolidated company, formed by consolidation of the said Toledo, Dupont and Western Railway Company with the companies organized under and
60 pursuant to the statutes of the States of Indiana and Illinois, shall be and become the owner and purchaser of the continuous line of railroad and property extending from Toledo, Ohio, to East St. Louis, Illinois, lately known as "the Toledo, Cincinnati and St. Louis railroad."

And for and in consideration of the valuable considerations hereinafter recited, and for and in consideration of the contracts, covenants and agreements of the party of the second part hereinafter recited, and for and in consideration of the securities to be executed and issued by said consolidated company, when the same shall have been formed as hereinbefore provided—other than the common capital stock of said consolidated company—the said party of the first part further covenants, contracts and agrees that said consolidated company shall, without delay, and within a reasonable time, broaden the gauge of said railroad from Toledo, Ohio, to East St. Louis, Illinois, so as to make the same of the standard gauge, and shall lay the tracks of said railroad with steel rails of not less than sixty (60) pounds weight to the yard, and make said line of railroad in all respects a first-class standard-gauge railroad and equip the same with proper rolling stock and motive power.

Third. The Toledo, Dupont and Western Railway Company, party of the second part herein, for and in consideration of the execution of this agreement by the party of the first part herein, and for and in consideration of the purchase and conveyance to the said party of the second part of that portion of the railway and property lately known as "the Toledo, Cincinnati and St. Louis railroad," lying and being within the State of Ohio, and of the rights, properties, immunities and franchises thereunto belonging, as hereinbefore mentioned and described, hereby contracts, covenants and agrees to execute and deliver to the party of the first part, his successors or assigns, or to the person or persons designated by the said party of the first part, their successors or assigns, the following securities, to wit:

1. Thirty-four thousand nine hundred and ninety-four (34,994) shares, of one hundred ($100) dollars each, of the fully paid common capital stock of the said The Toledo, Dupont and Western Railway Company.

2. And as and for further consideration for said purchase and conveyance of said portion of said railroad and property hereinbefore described, in addition to the thirty-four thousand nine hundred and

ninety-four (34,994) shares, of one hundred ($100) dollars
61 each, of the fully paid common capital stock of the said The Toledo, Dupont and Western Railway Company, hereinbefore provided to be executed, issued and delivered to said party of the first part herein, the said party of the second part hereby contracts, covenants and agrees that as soon as practicable, after the consolidation hereinbefore provided for in the second clause of this agreement, shall have been completed and perfected, the said consolidated company, owning and possessing the entire line of railroad and property now owned by the party of the first part, extending from Toledo, Ohio, to East St. Louis, Illinois, shall execute and issue as and for, and in full and complete payment of, the purchase price for the said railroad and property, and in consideration of and as and for, and in full and complete payment for, the broadening of the gauge, reconstructing of said railroad now owned by the party of the first part, from Toledo, Ohio, to East St. Louis, Illinois, and equip the same, as hereinabove provided and set forth, and for the purpose of exchanging some of said stock and securities with the holders of certain securities issued by the companies heretofore owning and controlling said railroad and property, or portions thereof, for the payment of certain debts, underlying liens, rights of way and other proper corporate purposes, the following securities, to wit:

1. An amount of fully paid common capital stock of said consolidated company equal to the aggregate amount of the common capital stock of the said three constituent companies of Ohio, Indiana and Illinois, entering into and forming said consolidated company. Said consolidated company shall also have authority to issue and shall issue, additional common capital stock to the amount of twenty-five thousand ($25,000) dollars per mile for each mile of additional main line or branch railroad that may hereafter be constructed by said consolidated company, between a point on said present line of railroad at or near Dupont, Ohio, and a point on said present line at or near Decatur, in the State of Indiana.

2. Said consolidated company shall execute and issue five million eight hundred and five thousand ($5,805,000) dollars of fully paid preferred coupon convertible stock for the purposes hereinbefore set forth.

3. Said consolidated company shall further execute and issue for the said purposes hereinbefore set forth nine million ($9,000,000) dollars par value of its first-mortgage six per cent. gold bonds, interest payable semi-annually; said bonds to mature at not exceeding thirty (30) years from and after the date thereof; said first mortgage
62 further providing for a further issue of bonds of like tenor and effect to an amount not exceeding eight hundred thousand ($800,000) dollars, to be issued at the rate of twenty thousand ($20,000) dollars per mile upon and whenever a new and additional line of standard-gauge railroad built and completed in all respects as hereinabove set forth shall be constructed between a point on said present line at or near Dupont, Ohio, and a point on said present line at or near Decatur, in the State of Indiana.

4. It is further hereby mutually covenanted and agreed by and

between the said party of the first part and the said party of the second part that this agreement shall be and become operative and binding upon the parties hereto their successors or assigns when and as soon as the same shall have been sanctioned, ratified, and adopted by the unanimous vote of all of the incorporated stock of the said The Toledo, Dupont and Western Railway Company at a meeting of the stockholders of said company at which all of the stockholders of said company are present either in person or by proxy.

In witness whereof the said party of the first part has hereunto set his hand and seal and the said party of the second part has caused its corporate seal to be hereunto affixed, and these presents to be duly signed by its president and attested by its secretary the day and year first above written.

[SEAL.] SYLVESTER H. KNEELAND. [L. S.]

THE TOLEDO, DUPONT AND WESTERN RAILWAY COMPANY,

By CLARENCE BROWN, *President.*

Attest: FREDERICK L. GEDDES, *Secretary.*

(Endorsement:) United States circuit court for the northern district of Ohio, western division. Continental Trust Company of the City of New York, complainants, against Toledo, St. Louis and Kansas City Railroad Company *et al.*, respondents. In the matter of the petition of Samuel Hunt, as reciever of the Toledo, St. Louis and Kansas City Railroad Company. Exhibit. E. (E.) Clarence Brown, solicitor for receiver, Toledo, Ohio. Filed. May 28, 1900. Irvin Belford, clerk.

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EXHIBIT F.

Agreement, made and entered into this first day of June, 1891, by and between the Toledo, St. Louis and Kansas City Railroad Company, party of the first part, and Sylvester H. Kneeland, party of the second part.

Whereas, a certain agreement, in writing, was made and entered into on or about the twenty-third day of January, 1886, by and between James M. Quigley, Charles T. Harbeck and John McNab, trustees for the first-mortgage bondholders of the Toledo, Delphos & Burlington Railroad Company of Ohio and Indiana, parties of the first part thereto, and Sylvester H. Kneeland, party of the second part thereto; and

Whereas, on or about the said twenty-third day of January, 1886, a certain other agreement was made and entered into by and between James M. Quigley, Halsey J. Boardman and Warren D. Hobbs, as trustees of the first-mortgage bondholders of the Toledo, Cincinnati and St. Louis Railroad Company and said Kneeland; and

Whereas, pursuant to said two agreements above mentioned, the said Sylvester H. Kneeland caused to be organized a railroad corporation under the laws of the State of Ohio, and also caused to be

organized a like corporation under the laws of the State of Indiana, and also caused to be organized a like corporation under the laws of the State of Illinois, and thereafter caused said three corporations to be consolidated into a single corporation known and designated as the Toledo, St. Louis and Kansas City Railroad Company, and thereupon said consolidated corporation issued its securities pursuant to said agreements of January 23, 1886, and the same were delivered to and placed in the hands of two trustees selected as provided in said two agreements; and

Whereas, the party of the second part purchased the said line of railroad from Toledo to St. Louis; and

Whereas, all the property purchased by him at the foreclosure sale mentioned in said two agreements of January 23, 1886, became and is the property of said consolidated corporation; and

Whereas, the said Kneeland proceeded to rebuild and reconstruct said line of railroad from Toledo, to East St. Louis, and has heretofore received large payments of securities on account of said two agreements of January 23, 1886; and

64 Whereas, sundry disputes and controversies have arisen between the said Kneeland and the said consolidated corporation, concerning said Kneeland's performance of said two agreements of January 23, 1886, and also concerning other matters arising out of the dealings between the parties hereto previous to the date hereof; and

Whereas, the trustees mentioned in said two agreements of January 23, 1886, and their successors in trust, hold in their possession certain securities, consisting of first-mortgage bonds, preferred stock and common stock of said consolidated corporation, for the purposes of said two agreements; and

Whereas, the said Kneeland desires to procure the delivery to him of said securities, upon terms and conditions not precisely within the provisions of said two agreements of January 23, 1886, and to that end desires that the consent of the parties of the first part respectively to said two agreements of January 23, 1886, and of the two trustees appointed to take custody of, and to distribute the securities under said agreements, or their successors in trust, should be obtained to the delivery of said securities; and

Whereas, it is desired to settle all matters of difference between the said party of the first part and the said Kneeland, the party of the second part, and also all matters and things arising under said two agreements of January 23, 1886, between all the parties thereto.

Now, therefore, this agreement witnesseth, that the said Kneeland admits, represents and agrees that the interest coupons set forth in Schedule "A," hereto annexed, have been fully paid and satisfied by said corporation, and are now held by him subject to the order of said consolidated corporation, and upon a trust and duty to deliver the same to said consolidated corporation to be canceled, such delivery to be made as follows:

One-half of said coupons to be delivered within thirty days, and the remaining one-half to be delivered within sixty days from the

date hereof. Said Kneeland shall also pay the party of the first part sufficient money to meet outstanding coupons, not included in Schedule "A," and which are not met by the amount now on deposit for that purpose in the Bank of North America.

Said Kneeland not having fully completed the payment of the purchase-money under said foreclosure sale, because of the pendency of litigated claims, admits that he is liable to pay into court sufficient moneys in cash, on account of said purchase price, to pay all unpaid claims which have been or may hereafter be adjudi-
65 cated to be prior to the claims of the old first-mortgage bonds of the Toledo, Delphos and Burlington, and of the Toledo, Cincinnati and St. Louis Railroad Companies respectively.

The said consolidated corporation, party of the first part, and the said Sylvester H. Kneeland, party of the second part, agree to settle and liquidate all mutual claims and demands of every kind and description whatsoever, existing between said party of the first part and said party of the second part, excepting only said coupons and said unpaid purchase-money, and the claim in relation to water-front improvements in Toledo (all of which excepted matters are adjusted and disposed of by other provisions of this agreement), by the payment on the part of said Kneeland to the said consolidated corporation of the sum of three hundred and sixty-seven thousand dollars, which is to be received in compromise, satisfaction and accord of all claims and demands of every kind and description whatsoever, on the part of said consolidated corporation, against said Kneeland except as aforesaid.

And the said Kneeland hereby agrees to pay to said consolidated corporation the sum of three hundred and sixty-seven thousand dollars, as hereinafter provided. Said party of the second part agrees to pay the sum of two hundred and sixty thousand dollars as fast as the same shall be required by the party of the first part, to pay its maturing coupons of June 1, 1891. And the said party of the second part hereby covenants and agrees that the said outstanding coupons maturing at that date, which the party of the first part shall be called upon to pay, shall not exceed said sum of two hundred and sixty thousand dollars, and all in excess of said sum, which may be presented, the said party of the second part hereby agrees to pay, in addition. The remaining sum of one hundred and seven thousand dollars, the said party of the second part hereby agrees to pay to said party of the first part, from time to time, as the president of the said party of the first part may demand the same, but in any event, the whole amount of said sum of one hundred and seven thousand dollars shall be fully paid by said party of the second part, on or before six months after the date hereof.

And it is expressly agreed that the sum of one hundred thousand dollars out of said balance of one hundred and seven thousand dollars last mentioned, shall be set aside in the hands of the president of said party of the first part, as a specific fund for the com-
66 pletion of the road-bed and tracks of said party of the first part, the acquisition of land, construction of permanent betterments and the completion and equipment of machine shops.

And in consideration of the premises and of the covenants and promises of the party of the second part, the party of the first part hereto covenants and agrees, that it will make and execute its own notes to the aggregate amount of $250,000 payable to the order of the party of the second part, with interest at six per cent., four months after date, to be endorsed by the said party of the second part and to be delivered to the said party of the second part as hereinafter provided. The said parties hereto also consent that the said two trustees appointed under and by virtue of said two agreements of January 23, 1886, to take custody of and distribute the securities of said consolidated corporation, or their successors in trust, shall and may, and they hereby are requested by the parties hereto, to deliver to the party of the first part, upon the order of the said party of the second part, forthwith, first-mortgage bonds of the party of the first part, of the par value of one hundred thousand dollars, and ten thousand shares of the common stock of said party of the first part, which bonds and stock, when delivered, the said party of the first part hereby agrees to hold, in trust, and for the purpose of delivery to the said party of the second part as hereinafter provided.

The said party of the second part further agrees that upon the execution and delivery of this agreement he will forthwith deliver to said party of the first part, ten thousand shares of the common stock of said party of the first part, to be held by said party of the first part in trust and for the purposes of delivery to the said party of the second part, upon the terms and conditions hereinafter mentioned.

Said party of the first part further agrees that said notes of the party of the first part, endorsed by said party of the second part, together with said first-mortgage bonds of the par value of one hundred thousand dollars, and said twenty thousand shares of the common stock of the par value of two million dollars, held by it as aforesaid, shall be used by the said party of the second part, to raise moneys to go towards the payment of said sum of two hundred and sixty thousand dollars hereinbefore mentioned, and said notes with a proportionate part of said securities, shall be delivered to said party of the second part, as fast as he shall pay to said party of the first part, cash equal to the face amount of the notes delivered;
67 except that said party of the second part shall receive a first delivery of notes, with collateral, to the amount of thirty thousand dollars, at the time of the delivery of said ten thousand shares of stock, and he shall not be required to pay cash for said thirty thousand dollars in notes, until after the delivery of all the remaining notes and accompanying collateral as herein provided. Said notes, either original or renewed, of said party of the first part, shall be deemed to have been made for the accommodation of said party of the second part, and shall be paid by him at the maturity thereof and upon such payment shall be canceled, and the said party of the second part shall — upon be and become the sole and absolute owner of all the securities used as collateral with said notes to raise the moneys aforesaid; and all interest on said notes and expenses of negotiating the same incurred by the party of the second part in

negotiating or using the same, shall be borne by him without any claim therefor against the party of the first part. But in case the said party of the second part shall fail to pay any of said notes or the renewal notes herein authorized at the maturity thereof, then the securities pledged as collateral to said unpaid notes respectively, shall forthwith, without further act on the part of the said party of the second part, be and become the property of the party of the first part, and the same shall forthwith be sold to provide funds to pay said notes, and the said party of the second part shall be and become liable to the party of the first part, for any deficiency that shall remain unpaid from the proceeds of said sale, after paying all the expenses of said sale or prior claims.

And it is expressly understood and agreed that the assent of the trustees of the old first-mortgage bondholders under said two agreements of January 23, 1886, to the delivery of securities according to the plan of this agreement, is requested upon the express condition that there may be one renewal of four months, of said notes by the party of the first part, but no more.

All the rest and residue of the securities of the party of the first part, which shall remain in the hands of said two trustees appointed to take custody of said securities under said two agreements of January 23, 1886, or their successors in trust, the said parties hereto consent and hereby request that the said two trustees shall forthwith deliver to the Farmers' Loan and Trust Company of the City of New York, upon the execution by the said trust company of a declaration of trust to the effect that it agrees to receive and hold said securities in accordance with the trust hereby created;
68 and the said trust company shall thereupon hold the same in trust, as security for the payment of all purchase-money under said foreclosure sale, due from the party of the second part, to the extent of all claims upon the proceeds of said sale, which are prior to the claims of said old first-mortgage bonds of the said Toledo, Delphos and Burlington Railroad Company, of Ohio and Indiana, and of the Toledo, Cincinnati and St. Louis Railroad Company, respectively; and upon the further trust to pay over and deliver said securities to the said party of the second part, as fast as he shall pay said claims against said proceeds of the foreclosure sale, in the following manner, to wit: For each claim so paid by said party of the second part, the said Farmers' Loan and Trust Company shall deliver to the said party of the second part, preferred stock at twenty-five, to the amount of the moneys paid, until said preferred stock shall be fully delivered and thereafter, first-mortgage bonds, at par, to the amount of further claims paid, until all said bonds shall be delivered and thereafter upon the payment of the remaining claims, the entire balance of said common stock, and upon the full payment of all said claims against said purchase-money and said proceeds of said foreclosure sale, prior to the claims of said old first-mortgage bonds, then the said Farmers' Loan and Trust Company shall deliver to said party of the second part any and all securities which shall remain in its possession and which it received under said trust, as security for the payment of said claims,

and the same shall become the absolute property of the said party of the second part.

It is further agreed that all claims against said proceeds of the said foreclosure sale upon which there are outstanding adjudications decreeing them to be prior to the claims under the old first-mortgage bonds, shall, in the event that such adjudications are reversed, in such manner that said claims are finally disallowed and disposed of, be treated as claims actually paid by said party of the second part, and securities shall be delivered to him in the same manner as if said claims were paid, provided, that the said party of the second part shall have paid the said sum of one hundred and seven thousand dollars as herein agreed.

And it is further agreed by the parties hereto that no right of the said two trustees under said two agreements of January 23, 1886, to compensation for their services in the custody and distribution of securities, is hereby recognized or in any way admitted, but in the event that a court of competent jurisdiction shall allow to said two trustees any compensation out of said securities in their hands
69 which shall diminish the amount available for delivery to said Farmers' Loan and Trust Company such diminution shall not be deemed a partial failure of consideration for this agreement, nor shall it impair the binding force or effect thereof, it being understood that any compensation that is paid to said trustees shall come out of securities which would otherwise go to said Kneeland, or by direct payment from said Kneeland personally.

It is further agreed by the parties hereto, that fifteen hundred shares of common stock of the party of the first part, heretofore delivered by the party of the second part to the president of the party of the first part and now in his possession, shall, from and after the date hereof, be held by said president, as security for the payment of said sum of one hundred and seven thousand dollars, as hereinbefore provided, and upon the payment of said sum, shall thereupon be delivered up to the said Kneeland, free from all claims of said party of the first part.

And it is further agreed by the parties hereto, that all the legal expenses for counsel fees of the bondholders' committee, to said two agreements of January 23, 1886, in effecting this settlement and in preparing the agreement of settlement and in doing other necessary matters in respect thereto, shall be paid by the party of the first part, upon proper vouchers furnished. Said legal expenses to and including May 30, 1891, being fixed at $750 to which shall be added such reasonable amount as may be proper for further services in the same matter necessarily rendered.

And it is further agreed that all claims on the part of the party of the first part under this agreement or of the party of the first part under said two agreements of January 23, 1886, against the said party of the second part to this agreement, by reason of his alleged failure to provide proper terminal facilities for the party of the first part at Toledo, on the river front and the approaches thereto, shall be reserved and excepted from the matters and things which are settled

or liquidated by this agreement—being provided for by a separate agreement bearing even date hereunto.

It is further agreed by the parties hereto, that all the first-mortgage bonds and preferred and common stock of the party of the first part, heretofore placed in the custody of the two trustees under said two agreements of January 23, 1886, have been paid out and delivered by said trustees, properly, in accordance with their
70 duties and powers under said agreements, except in so far as they may have appropriated or taken securities for their own compensation and their administration of their duties under said agreement, is hereby approved and ratified with the exception aforesaid, the parties hereto reserving the right to question and dispute any claim of said trustees and also reserving the right to hold them liable for any securities taken by them for or on account of their compensation and in every way to dispute their right to take any of said securities for their compensation.

It is further agreed by the parties hereto, that the said party of the second part shall turn over and deliver the said line of road from Toledo to St. Louis to the said party of the said first part, and the party of the first part shall accept said road as of the date of December 31st, 1890; said road, as it now stands, to be accepted, together with the other matters and things herein agreed to be done by the said party of the first part, in lieu of and in satisfaction of the full performance of said two agreements of January 23, 1886; provided, however, that if said party of the second part shall fail to perform any of the provisions of this agreement, fully, according to the exact terms and tenor thereof, then and on that event said acceptance of said road shall be null and of no effect, and this agreement shall by force of the provisions hereof become void, *ab initio*, as a settlement. And all matters in dispute between the party of the first part and the party of the second part, or between the party of the second part and other persons interested in said two agreements of January 23, 1886, shall be reopened and reinstated, and all parties and persons shall be remitted to their mutual rights and relations, as they stood prior to the making of this agreement, and to all mutual claims existing at that time, which shall thereby revive; and any deliveries of securities or payments of money which may or shall have been made at the time such breach of this agreement shall occur, shall be deemed applicable as mutual credits and charges on the claims and accounts of said parties and persons, as they stood prior to the making of this agreement, and shall be accounted and settled for, as if this agreement had not been made; but the said two trustees under said two agreements of January 23, 1886, and their successors in trust shall be protected by this agreement to the extent of any securities which they may actually have delivered or given out, at the time of such breach, but not after such breach and notice thereof.

And it is further agreed that in the event that the said
71 party of the first part shall fail to perform any of the provisions of this agreement, then and in that event this agree-

ment shall, at the option of the party of the second part, be and become null and void, *ab initio*.

In testimony whereof, the party of the first part, by order of its board of directors, has caused its name to be signed hereto, by its president, and its corporate seal to be affixed and duly attested by its secretary, and the party of the second part has hereunto signed his name and affixed his seal, the day and year first above written.

This contract is executed in four copies.

TOLEDO, ST. LOUIS & KANSAS CITY R. R. CO.,
By S. R. CALLAWAY, *President*.

Attest: ISAAC WHITE, *Secretary*.

S. H. KNEELAND. [L. S.]

NEW YORK, *June* 2, 1891.

The Farmers' Loan & Trust Company of New York, hereby accepts the trust conferred upon it by the foregoing contract, between the Toledo, St. Louis & Kansas City Railroad Company and Sylvester H. Kneeland, dated June 1, 1891, and agrees to receive, hold and deliver such securities as may be delivered to it thereunder, in accordance with the terms of said contract. Payments having been made, deliveries shall be made upon claims specified by the certificate of the president of the Toledo, St. Louis and Kansas City Railroad Company, and Sylvester H. Kneeland, showing that claims upon which deliveries are asked, and those included in the contract, and the certificate of the clerk of the circuit court of the United States, district of Indiana, that the claim paid is a claim upon the proceeds of the foreclosure sale, in court, and a lien and charge thereon prior to the lien of the old first-mortgage bonds, under which foreclosure was had; and upon such deliveries being made, in accordance with such orders, the Farmers' Loan and Trust Co. shall thereupon be fully discharged and released.

THE FARMERS' LOAN AND TRUST COMPANY,
By W. H. LEUPP, *2d V. P.*

The parties hereto hereby approve the foregoing acceptance by the Farmers' Loan and Trust Company and consent to the delivery of the securities in the manner therein provided.

June 2, 1891.

TOLEDO, ST. LOUIS & KANSAS CITY R. R. CO.,
By S. R. CALLAWAY, *President*.
S. H. KNEELAND.

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SCHEDULE "A."

Coupons out June 1, 1891.

No. 2	
No. 2	76
No. 4	176
No. 5	286
No. 6	286
No. 7	286
No. 8	1216
No. 9	1058
	1049
	4433

There are about $2,500 of No. 9 coupons, listed to be paid by bank that are still out and the bank holds $176.80 in money to pay them with.

This schedule is to be taken as tentative so far as coupon No. 9 is concerned, and shall be made to conform to the facts, Mr. Kneeland, claiming to hold but 1030 coupons not on the list at the Bank of North America, the amounts relating to the other numbers being admitted to be correct.

(Endorsement:) No. 1205. United States circuit court, for the northern district of Ohio, western division. Continental Trust Company of the City of New York, etc., complainants, against Toledo, St. Louis & Kansas City Railroad Company, *et al.*, respondents. In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company. Exhibit F. Clarence Brown, solicitor for receiver, Toledo, Ohio. Filed. May 28, 1900. Irvin Belford, clerk.

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EXHIBIT G.

Whereas, under and by virtue of an agreement made and entered into by and between the mortgage bondholders and creditors of the Toledo, Delphos & Burlington Railroad Company, and the mortgage bondholders and creditors of the Toledo, Cincinnati & St. Louis Railroad Company of Indiana and Illinois, parties of the first part, called the creditors, and James M. Quigley, Charles W. Pierce, Halsey J. Boardman, John McNab and Charles T. Harbeck, parties of the second part, called the trustees, dated April 9th, 1884, said James M. Quigley, Charles W. Pierce, Halsey J. Boardman, John McNab and Charles T. Harbeck are appointed trustees as therein provided; and,

Whereas, the said Charles W. Pierce thereafter resigned and Warren D. Hobbs was duly appointed trustee to succeed him; and,

Whereas, a certain agreement, in writing, was made and entered into on or about the twenty-third day of January, 1886, by and be-

tween James M. Quigley, Halsey J. Boardman and Warren D. Hobbs, trustees for the first-mortgage bondholders of the Toledo, Cincinnati & St. Louis Railroad Company of Indiana and Illinois, parties of the first part thereto, and Sylvester H. Kneeland, party of the second part thereto, and,

Whereas, by reason of circumstances which have arisen
74 since the last-mentioned contract was made and entered into, it has become impracticable to execute and carry out the purposes of said last-mentioned agreement of January 23, 1886, fully and strictly according to the exact terms thereof; and,

Whereas, it is necessary and expedient for the interests of all concerned in said last-mentioned agreement of January 23, 1886, that some change should be made in said last-mentioned agreement to the end that it may be carried out as nearly as practicable; and,

Whereas, the Toledo, St. Louis & Kansas City Railroad Company has made and entered into an agreement with Sylvester H. Kneeland, bearing date June 1st, 1891, wherein and whereby a certain settlement and adjustment is made of all matters in dispute between said Kneeland and said company, excepting certain matters specially reserved; and,

Whereas, the concurrence and consent of the parties of the first part to said last-mentioned agreement of January 23, 1886, is requested by the said The Toledo, St. Louis & Kansas City Railroad Company, and by said Sylvester H. Kneeland to the end that said settlement may be carried out; and said parties of the first part to said agreement are also requested to modify said last-mentioned agreement of January 23, 1886, to the extent requisite to enable the trustees to deliver said securities in accordance with the terms of said settlement.

Now, therefore, we, James M. Quigley, Halsey J. Boardman and Warren D. Hobbs as such trustees under said agreement of April 9th, 1884, and as parties of the first part to said last-mentioned agreement of January 23, 1886, hereby agree that said last-mentioned agreement of January 23, 1886, may and shall be so far modified as shall be requisite in order to permit and authorize the two trustees appointed to the custody and distribution of the securities mentioned in said last-mentioned agreement of January 23, 1886, to distribute and pay over the residue of said securities now remaining in their hands, in accordance with the terms of said settlement now agreed upon between said railroad company and said Kneeland, the said James M. Quigley, Halsey J. Boardman and Warren D. Hobbs as such trustees and parties to said last-mentioned agreement of January 23, 1886, hereby accepting for the persons whom they represent all the benefits of said settlement and of said agreement of settlement to which said beneficiaries are or may be entitled.

It being understood and agreed, however, that the consent and agreements of the said James M. Quigley, Halsey J. Boardman
75 and Warren D. Hobbs, herein contained are made and entered into upon the express condition that the said railroad company shall simultaneously with the delivery hereof, execute and

deliver an agreement in writing, between the Toledo, St. Louis and Kansas City Railroad Company, party of the first part thereto, Sylvester H. Kneeland, party of the second part thereto; James M. Quigley, Charles T. Harbeck and John McNab, trustees for the first-mortgage bondholders of the Toledo, Delphos and Burlington Railroad Company of Ohio and Indiana, parties of the third part thereto, and James M. Quigley, Halsey J. Boardman and Warren D. Hobbs, trustees for the first-mortgage bondholders of the Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois, parties of the fourth part thereto, whereby the said railroad company shall agree to and with its preferred stockholders (being substantially the old first-mortgage bondholders or their successors, together with such additional holders of preferred stock as were not previously interested in said old first-mortgage bonds) that in case the earnings of said company which constitute part of its income, or any part thereof, shall at any time hereafter be used for betterments, improvements or additions to its property, ordinary maintenance excepted, as it now exists, or for the purpose of rolling stock or equipment, either directly or indirectly, then and thereupon the said railroad company shall issue within a reasonable time, and without undue delay, scrip dividends to the holders of the preferred stock of said company to an amount equal to the amount of earnings hereafter devoted to said betterments, additions, improvements, etc., provided however, that the amount of said scrip shall at no time exceed the amount of coupons of said stock which shall have matured and shall not have been paid, whether the same shall have been surrendered or not, the obligation to issue scrip therefor remaining, notwithstanding any such surrender; and from and after the date of such agreement the holders of coupons shall not be required or obligated to surrender the same until they shall have received payment therefor, either in cash or by such scrip as herein provided; said scrip to be paid not more than five years from the date hereof, and to bear interest at the rate of five per cent., and to be exchangeable at the option of the holders for any form of securities which the said company may hereafter issue. Said agreement shall be irrevocable and the right to receive such scrip is thereby to be given to the parties of the third and fourth parts thereto for the benefit of the preferred stockholders in lieu of
76 other matters and things which the said preferred stockholders or some of them claim that they might or would have received, or would or might have been entitled to receive, if said agreement of June 1st, 1891, had not been made, and if it had not been signed by the parties of the third and fourth parts to said agreement.

And said agreement shall also provide that the promises and covenants therein contained made by the parties of the first and second parts, shall be made and intended to be made for the benefit of the preferred stockholders, jointly and severally, and shall have the same effect as if the promises and covenants were made to the preferred stockholders, their executors and assigns, jointly and severally, and said preferred stockholders, were parties to this agree-

ment; it being understood that they shall be deemed privy to this agreement in all respects as though they were parties.

In witness whereof, we have hereunto set our hands and seals this first day of June, 1891.

JAMES M. QUIGLEY,
As Trustee as Aforesaid.
HALSEY J. BOARDMAN,
Acting as Trustee of First-mortgage Bondholders of T., C. & St. L. R. R. of Indiana and Illinois, Acting under Agreement of April 9th, 1884.

(Endorsement:) United States circuit court for the northern district of Ohio, western division. Continental Trust Company of the City of New York and another, complainants, against Toledo, St. Louis and Kansas City Railroad Company *et al.*, respondents. In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company. Exhibit. G. Clarence Brown, solicitor for receiver, Toledo, Ohio. Filed. May 28, 1900. Irvin Belford, clerk.

77 EXHIBIT H.

Whereas, under and by virtue of an agreement made and entered into by and between the mortgage bondholders and creditors of the Toledo, Delphos & Burlington Railroad Company, and the mortgage bondholders and creditors of the Toledo, Cincinnati & St. Louis Railroad Company, of Indiana and Illinois, parties of the first part, called the creditors, and James M. Quigley, Charles W. Pierce, Halsey J. Boardman, John McNab and Charles T. Harbeck, parties of the second part, called the trustees, dated April 9th, 1884, said James M. Quigley, Charles W. Pierce, Halsey J. Boardman, John McNab and Charles T. Harbeck are appointed trustees as therein provided; and

Whereas, the said Charles W. Pierce thereafter resigned and Warren D. Hobbs was duly appointed trustee to succeed him; and

Whereas, a certain agreement, in writing, was made and entered into on or about the twenty-third day of January, 1886, by and between James M. Quigley, Charles T. Harbeck and John McNab, trustees for the first-mortgage bondholders of the Toledo, Delphos & Burlington Railroad Company of Ohio and Indiana, parties of the first part thereto, and Sylvester H. Kneeland, party of the second part thereto; and

Whereas, by reason of circumstances which have arisen since the said last-mentioned contract was made and entered into, it has become impracticable to execute and carry out the purposes of said last-mentioned agreement of January 23, 1886, fully and strictly according to the exact terms thereof; and

Whereas, it is necessary and expedient for the interests of all concerned in said last-mentioned agreement of January 23, 1886, that some change should be made in said last-mentioned agreement to the end that it may be carried out as nearly as practicable; and,

Whereas, the Toledo, St. Louis & Kansas City Railroad Company has made and entered into an agreement with Sylvester H. Kneeland, bearing date June 1st, 1891, wherein and whereby a certain settlement and adjustment is made of all matters in dispute between said Kneeland and said company, excepting certain matters specially reserved; and,

78 Whereas, the concurrence and consent of the parties of the first part to said last-mentioned agreement of January 23, 1886, is requested by the said The Toledo, St. Louis & Kansas City Railroad Company and by said Sylvester H. Kneeland to the end that said settlement may be carried out; and said parties of the first part to said agreement are also requested to modify said last-mentioned agreement of January 23, 1886, to the extent requisite to enable the trustees to deliver said securities in accordance with the terms of said settlement;

Now, therefore, we, James M. Quigley, Charles T. Harbeck and John McNab, as such trustees, under said agreement of April 9th, 1884, and as parties of the first part to said last-mentioned agreement of January 23, 1886, hereby agree that said last-mentioned agreement of January 23, 1886, may and shall be so far modified as shall be requisite in order to permit and authorize the two trustees appointed to the care and distribution of the securities mentioned in said last-mentioned agreement of January 23, 1886, to distribute and pay over the residue of said securities now remaining in their hands, in accordance with the terms of said settlement now agreed upon between said railroad company and said Kneeland; the said James M. Quigley, Charles T. Harbeck and John McNab, as such trustees and parties to said last-mentioned agreement of January 23, 1886, hereby accepting for the persons whom they represent all the benefits of said settlement and of said agreement of settlement to which said beneficiaries are or may be entitled.

It being understood and agreed, however, that the consent and agreements of the said James M. Quigley, Charles T. Harbeck and John McNab, herein contained, are made and entered into upon the express condition that the said railroad company shall simultaneously with the delivery hereof execute and deliver an agreement, in writing, between the Toledo, St. Louis and Kansas City Railroad Company, party of the first part thereto; Sylvester H. Kneeland, party of the second part thereto; James M. Quigley, Charles T. Harbeck and John McNab, trustees for the first-mortgage bondholders of the Toledo, Delphos and Burlington Railroad Company of Ohio and Indiana, parties of the third part thereto, and James M. Quigley, Halsey J. Boardman and Warren D. Hobbs, trustees for the first-mortgage bondholders of the Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois, parties of the fourth part thereto, whereby the said railroad company shall agree to

79 and with its preferred stockholders (being substantially the old first-mortgage bondholders or their successors, together with such additional holders of preferred stock as were not previously interested in said old first-mortgage bonds); that in case the earnings of said company which constitute part of its income, or any

part thereof, shall at any time hereafter be used for betterments, improvements or additions to its property, ordinary maintenance excepted, as it now exists, or for the purpose of rolling stock or equipment, either directly or indirectly, then and thereupon the said railroad company shall issue within a reasonable time and without undue delay, scrip dividends to the holders of the preferred stock of said company, to an amount equal to the amount of earnings hereafter devoted to said betterments, additions, improvements, etc., provided, however, that the amount of said scrip shall at no time exceed the amount of coupons of said stock, which shall have matured and shall not have been paid whether the same shall have been surrendered or not, the obligation to issue scrip therefor remaining, notwithstanding any such surrender; and from and after the date of such agreement the holders of coupons shall not be required or obligated to surrender the same until they shall have received payment therefor, either in cash or by such scrip as herein provided; said scrip to be paid not more than five years from the date hereof, and to bear interest at the rate of five per cent., and to be exchangeable at the option of the holders for any form of securities which the said company may hereafter issue. Said agreement shall be irrevocable and the right to receive said scrip is thereby to be given to the parties of the third and fourth parts thereto for the benefit of the preferred stockholders in lieu of other matters and things which the said preferred stockholders or some of them claim that they might or would have received, or would or might have been entitled to receive, if said agreement of June 1st, 1891, had not been made, and if it had not been signed by the parties of the third and fourth parts to said agreement.

And said agreement shall also provide that the promises and covenants therein contained made by the parties of the first and second parts, shall be made and intended to be made for the benefit of the preferred stockholders, jointly and severally, and shall have the same effect as if the promises and covenants were made to the preferred stockholders, their executors and assigns, jointly and severally, and said preferred stockholders were parties to this agreement; it being understood that they shall be deemed
80 privy to this agreement in all respects as though they were parties.

In witness whereof, we have hereunto set our hands and seals this first day of June, 1891.

JAMES M. QUIGLEY,
As Trustee as Aforesaid.
CHARLES T. HARBECK,
As Trustee as Aforesaid.
JOHN McNAB,
As Trustee as Aforesaid.

(Endorsement:) United States circuit court for the northern district of Ohio, western division. Continental Trust Company of the City of New York and another, complainants, against Toledo, St. Louis and Kansas City Railroad Company *et al.*, respondents.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company. Exhibit. H. Clarence Brown, solicitor for receiver, Toledo, Ohio. Filed. May 28, 1900. Irvin Belford, clerk.

EXHIBIT I.

Whereas, on or about the first day of June, 1891, a certain agreement of settlement was made and entered into by and between the Toledo, St. Louis and Kansas City Railroad Company, party of the first part, and Sylvester H. Kneeland, party of the second part, and

Whereas, said agreement was consented to by James M. Quigley, Charles T. Harbeck and John McNab, trustees for the first-mortgage bondholders of the Toledo, Delphos and Burlington Railroad Company, of Ohio and Indiana, and also by James M. Quigley and Halsey J. Boardman, a majority of the trustees of the first-mortgage bondholders of the Toledo, Cincinnati and St. Louis Railroad Company, acting for the three trustees of said bondholders, to wit; James M. Quigley, Halsey J. Boardman and Warren D. Hobbs, and

Whereas, said agreement contains a provision for absolute forfeiture *ab initio*, by reason of the failure of the said Kneeland,
81 to do any of the acts or things therein agreed to be done or performed by him, and also provided for forfeiture, at the option of said Kneeland, in case of any breach by the said railroad company, party of the first part thereto; and

Whereas, it is claimed by some persons interested in said agreement that a default has already occurred in certain matters to be done thereunder by the said Kneeland, but it is desired to waive such default, if any.

Now, therefore, in consideration of all the matters and things set forth in said agreement of June 1, 1891, between the said railroad company and the said Kneeland, and in the agreement supplemental thereto, bearing the same date, and in the consents of the said trustees for the respective bondholders as aforesaid, and in further consideration of the waiver of the default claimed to have been made by the said Kneeland, it is mutually agreed by and between the said The Toledo, St. Louis and Kansas City Railroad Company, party of the first part, and the said Sylvester H. Kneeland, party of the second part, that said provisions in said contract of June 1, 1891, between the said railroad company and the said Kneeland, providing that said contract shall or may become void by reason of a breach, whether by the party of the first part or by the party of the second part, upon any option or otherwise, shall be stricken from the said agreement; and said agreement of June 1, 1891, shall be and the same hereby is amended so that it shall be absolute in its terms, and that the only remedy of either party, for any breach thereof, shall be by action founded upon the contract, whether for

damages or for specific performance or otherwise, as the case may require.

And it is further agreed, upon the same consideration, that the said agreement of June 1, 1891, shall be further amended, by adding the following provision thereto, viz.:

That in the event that said Kneeland shall fail to pay said sum of $107,000 mentioned in said agreement of June 1, 1891, within six months, as provided in said agreement, then and in that event, the said railroad company shall not be entitled to receive payment or collect said sum from said Kneeland; and the said Kneeland shall forthwith pay the said sum to the Farmers' Loan and Trust Company, as trustee, for the benefit of the railroad company and the bondholders and preferred stockholders and common stockholders thereof, and of all other persons interested in the application of said fund, for the uses mentioned in said agreement of June 1, 1891; and in the event that said Kneeland shall fail to pay said sum of
82 the Farmers' Loan and Trust Company, within thirty days from and after the expiration of said period of six months, then it shall be and become the duty of the Farmers' Loan and Trust Company, to sue for and use all practical means to recover said sum of $107,000 from the said Kneeland, of which sum, after paying all expenses of collection and the services of said trustee, $100,000 shall be paid out for betterments and additions to the track and road-bed and for the terminal property of the said railroad company, in accordance with the provisions of said contract of June 1, 1891; such payments to be made upon vouchers furnished by the president of the company, with a certificate by said president that the betterments or additions mentioned in the voucher, have been fully completed and are fairly and fully worth, at the ordinary rates, the sum mentioned in the voucher.

In case the said Farmers' Loan and Trust Company shall decline to accept this trust, then the trustee may be appointed by a majority of all the members of both bondholders' committees taken together, to be a trust company if any of good standing will accept.

The balance of said $107,000, if any, shall be paid over by the trustee to the said railroad company, party of the first part.

And the said common stock of the par value of $150,000, held by the said president as collateral, for the payment of said sum of $107,000, shall, at the expiration of six months, if said sum remains unpaid, be turned over to said trust company to be held by it as collateral, for the payment of said sum, and said president, while he continues to hold said stock, shall continue to hold it, as trustee, under this agreement and not by virtue of his office as president, and shall not be subject to instructions of the board of directors in the performance of his trust.

A majority of the members of said two bondholders' committees, collectively, shall also have power to appoint a trustee, in case of a vacancy through any cause; said trustee, to be a trust company, if any of good standing will accept.

In witness whereof, the said railroad company has caused these presents to be signed by its president and its corporate seal to be

hereunto affixed, and the said Kneeland has hereunto set his hand and seal this third day of June, 1891.

TOLEDO, ST. LOUIS & KANSAS CITY R. R. CO.,
By S. R. CALLAWAY, *President.*

Attest:

ISAAC W. WHITE, *Secretary.*
S. H. KNEELAND. [L. S.]

83 (Endorsement:) Circuit court of the U. S. northern dist. of Ohio, west. div. Continental Trust Company of the City of New York, etc., complainant, *vs.* Toledo, St. Louis and Kansas City R. R. Co., *et al.*, respondents. In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company. Exhibit I. Clarence Brown, solicitor for receiver, Toledo, Ohio. Filed, May 28, 1900, Irvin Belford, clerk.

EXHIBIT J.

Whereas, on or about the first day of June, 1891, a certain agreement was made and entered into by and between the Toledo, St. Louis & Kansas City Railroad Company, party of the first part, and Sylvester H. Kneeland, party of the second part; and

Whereas, on the same day a certain supplemental agreement between the same parties was made and entered into; and

Whereas, on the same day a consent of the trustees of the first-mortgage bondholders of the Toledo, Cincinnati & St. Louis Railroad Company to said agreement was duly given by an instrument in writing; and

Whereas, on the third day of June, 1891, said first-mentioned agreement and said agreement supplemental thereto were modified by an amended agreement made and entered into by and between the said The Toledo, St. Louis and Kansas City Railroad Company, party of the first part, and Sylvester H. Kneeland, party of the second part,

Now therefore, we, James M. Quigley, Halsey J. Boardman and Warren D. Hobbs, trustees for the first-mortgage bondholders of the Toledo, Cincinnati & St. Louis Railroad Company, acting by James M. Quigley and Halsey J. Boardman, a majority of said trustees, duly authorized thereto, in consideration of the promises, do hereby consent and agree to said amended agreement of June 3, 1891, and to the modification of said original agreement of June 1, 1891, and the agreement supplemental thereto, according to the terms of said amended agreement, and that the same shall be carried out as so amended.

In witness whereof, we have hereunto set our hands and seals the fourth day of June, in the year 1891.

84 JAMES M. QUIGLEY,
Chairman Trustees 1st-Mtge. Bondholders T., C. & St. L. R. R., Acting under Deed of Trust of April 9th, 1884.

HALSEY J. BOARDMAN,
As Trustee of First-mortgage Bondholders of T., C. & St. L. R. R. of Indiana and Illinois, Acting under Agreement of April 9th, 1884.

(Endorsement:) Circuit court of the U. S. northern dist. of Ohio, west. div. Continental Trust Company of the City of New York, etc., complainant, *vs.* Toledo, St. Louis and Kansas City R. R. Co., *et al.*, respondents. In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company. Exhibit J. Clarence Brown, solicitor for receiver, Toledo, Ohio. Filed, May 28, 1900, Irvin Belford, clerk.

EXHIBIT K.

Whereas, on or about the first day of June, 1891, a certain agreement was made and entered into by and between the Toledo, St. Louis & Kansas City Railroad Company, party of the first part, and Sylvester H. Kneeland, party of the second part; and

Whereas, on the same day a certain supplemental agreement between the same parties was made and entered into; and

Whereas, on the same day a consent of the trustees of the first-mortgage bondholders of the Toledo, Delphos & Burlington Railroad Company to said agreement was duly given by an instrument in writing; and

Whereas, on the third day of June, 1891, said first-mentioned
85 agreement and said agreement supplemental thereto were modified by an amended agreement made and entered into by and between the said The Toledo, St. Louis and Kansas City Railroad Company, party of the first part, and Sylvester H. Kneeland, party of the second part.

Now, therefore, we, James M. Quigley, Charles T. Harbeck, and John McNab, trustees for the first-mortgage bondholders of the Toledo, Delphos & Burlington Railroad Company, acting by James M. Quigley, and Charles T. Harbeck a majority of said trustees, duly authorized thereto in consideration of the promises, do hereby consent and agree to said amended agreement of June 3, 1891, and to the modification of said original agreement of June 1, 1891, and the agreement supplemental thereto, according to the terms of said amended agreement, and that the same shall be carried out as so amended.

In witness whereof, we have hereunto set our hands and seals the fourth day of June, in the year 1891.

CHARLES T. HARBECK,
Trustee under Agreement of April 9th, 1884, for Toledo, Delphos & Burlington Bondholders.

JAMES M. QUIGLEY,
Chairman and Trustee under Agreement of April 9, 1884, for Certain Toledo, Delphos & Burlington R. R. 1st-mortgage Bondholders.

(Endorsement:) Circuit court of the U. S. northern dist. of Ohio, west. div. Continental Trust Company of the City of New York, etc., complainant, *vs.* Toledo, St. Louis and Kansas City R. R. Co. *et al.*, respondents. In the matter of the petition of Samuel Hunt, as

receiver of the Toledo, St. Louis and Kansas City Railroad Company. Exhibit K. Clarence Brown, solicitor for receiver, Toledo, Ohio. Filed. May 28, 1900. Irvin Belford, clerk.

86 (Entered) Thursday, May 31, 1900.

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant,
vs.
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents. } No. 1205. In Equity.

CHARLES HAMLIN ET AL., Cross-complainants,
vs.
CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, Cross-respondents. } Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company.

This day comes Samuel Hunt, receiver of the Toledo, St. Louis and Kansas City Railroad Company by Clarence Brown, his solicitor, and presents to the court his intervening petition filed herein on the 28th day of May, 1900, upon consideration whereof, and on motion of his solicitor it is,

Ordered that the complainant Continental Trust Company of the City of New York, the respondents Toledo, St. Louis and Kansas City Railroad Company and Jules S. Bache, the cross-respondent Sylvester H. Kneeland, and Morton S. Paton, and Richard B. Hartshorne, the purchasers of the mortgaged premises, demur or plead to said petition or answer the same within twenty days from the date of the entry of this order; and it is further

Ordered that the clerk of this court forthwith mail to said Continental Trust Company of the City of New York, Toledo, St. Louis and Kansas City Railroad Company, Sylvester H. Kneeland, Morton S. Paton and Richard B. Hartshorne, addressed to them at their several offices, certified copies of this order.

Dated May 29, 1900, at chambers in the city of Cleveland, O.

A. C. THOMPSON,
U. S. Dist. Judge, Sitting by Designation.

87 Certified copies of the foregoing order were this day, May 31st, '00, at 2 o'clock p. m. deposited in the post-office at Toledo, Ohio, under official envelopes, addressed as follows, to wit:

Continental Trust Co., 30 Broad St., New York city, N. Y.
Richard B. Hartshorne, Esq., 35 Wall St., New York city, N. Y.
Morton S. Paton, 1 Broadway, New York city, N. Y.
Toledo, St. Louis & Kansas City Railroad Co.
Charles Milles, pres't, 18 Broadway, N. Y. city, N. Y.
Jules S. Bache, 30 Broad St., New York city, N. Y.
Sylvester H. Kneeland, 18 Broadway, New York city, N. Y.
Attest:
J. W. WILSON,
Deputy Clerk.

88 June Term, A. D. 1900, to wit, June 9, 1900.

Present: The Honorable Augustus J. Ricks, U. S. district judge.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant, *vs.* TOLEDO, ST. LOUIS AND KANSAS CITY RAILROAD Company *et al.*, Respondents.	No. 1205. In Equity.
CHARLES HAMLIN ET AL., Cross-complainants, *vs.* CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, Cross-respondents.	Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company.

This day comes Samuel Hunt, receiver of the Toledo, St. Louis and Kansas City Railroad Company by Clarence Brown, his solicitor, and presents to the court his intervening petition filed herein on the 28th day of May, 1900, upon consideration whereof, and on motion of his solicitor, it is

Ordered that the Farmers' Loan and Trust Company demur, or plead to said petition, or answer the same within twenty (20) days from the date of the entry of this order; and it is further

Ordered that the clerk of this court forthwith mail to said Farmers' Loan and Trust Company, addressed to it, at its office a certified copy of this order.

Dated June 9th, 1900, in the city of Toledo, Ohio.

Certified copy of above order mailed Farmers' Loan and Trust Co., 62 Williams St., New York city, N. Y., June 9, 1900.

Attest: J. W. WILSON,
Deputy Clerk.

89 In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant,
against
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents. } No. 1205. In Equity.

CHARLES HAMLIN ET AL., Cross-complainants,
against
CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, Cross-respondents. } Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company.

It is hereby stipulated that the time of the respondents, The Continental Trust Company of the City of New York, Morton S. Paton and Richard B. Hartshorne, in which to answer, demur or plead to the petition of Samuel Hunt, receiver filed herein on the 28th day of May, 1900 be and the same is hereby extended to and including July 10, 1900.

6, 15, '00.

CLARENCE BROWN,
Solicitor for Sam'l Hunt, Receiver, Petitioner.

(Endorsement:) No. 1205. U. S. circuit court, northern dist. of Ohio, western division. Continental Trust Co. *vs.* Toledo, St. Louis & Kansas City R. R. Co. Stipulation extending time to plead. Filed. Jun- 19, 1900 Irvin Belford, clerk.

90 In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant,
against
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents. } No. 1205. In Equity.

CHARLES HAMLIN ET AL., Cross-complainants,
against
CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, Cross-respondents. } Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company.

It is hereby stipulated that the time of the respondents, The Continental Trust Company of the City of New York, Morton S. Paton and Richard B. Hartshorne, in which to answer, demur or plead to the petition of Samuel Hunt, receiver, filed herein on the 28th day of May, 1900, be and the same hereby is extended to and including July 30th, 1900.

7/9/00.

CLARENCE BROWN,
Solicitor for Sam'l Hunt, Receiver, Petitioner.

(Endorsement:) No. 1205. U. S. circuit court. Northern dist. of Ohio, western division. Continental Trust Co. *vs.* Toledo, St. Louis & Kansas City R. R. Co. Stipulation extending time to plead. Filed. Jul- 12, 1900 Irvin Belford, clerk.

91 In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE City of New York, Survivor of John M. Butler, Complainant, *vs.* TOLEDO, ST. LOUIS AND KANSAS CITY Railroad Company *et al.*, Respondents.	No. 1205. In Equity.
CHARLES HAMLIN ET AL., Cross-complainants, *vs.* CONTINENTAL TRUST COMPANY OF THE City of New York *et al.*, Cross-respondents.	Cross-bill.

To the circuit court of the United States for the northern district of Ohio, western division:

The petition of James N. Wallace respectfully shows as follows:

First. Pursuant to the provisions of the decree of foreclosure and sale entered in this cause and dated the 1st day of April, 1898, and to the decree, entered in this cause dated November 11th, 1899, modifying said decree of April 1st, 1898, and to the decretal order entered January 19th, 1900, in this cause, and to the further decree entered in this cause on said January 19th, 1900, re-entering and confirming said decree of November 11th, 1899, Frank H. Shaffer and Merrill Moores, special masters, for that purpose appointed, made sale of the property embraced in the first mortgage of the Toledo, St. Louis and Kansas City Railroad Company on the 27th day of March, 1900, and at said sale Morton S. Paton and Richard B. Hartshorne became the purchasers thereof for the sum or price of $12,200,000, and said purchasers on the acceptance of their bid, paid to the special masters, in accordance with the terms and conditions of sale, the sum of $75,000.

Second. Said special masters duly filed in this court a report of said sale on or about the 2nd day of April, 1900, and by order entered in this cause on the 18th day of April, 1900, said
92 report of said special masters was in all things approved, and the said sale made by them to said Morton S. Paton and Richard B. Hartshorne was in all things ratified, approved, confirmed and made absolute.

To provide for the payment by them of the purchase price said purchasers have since delivered to the special masters, in pursuance of said order of confirmation, certificates of the Continental Trust Company of the City of New York that said trust company holds, subject to the order of said special masters, first-mortgage bonds of the Toledo, St. Louis and Kansas City Railroad Company, as follows:

$8,823,000 par value of said bonds, each bearing the coupon maturing June 1st, 1893, and subsequent coupons.

$3,000 par value of said bonds, each bearing the coupon maturing December 1st, 1893, and subsequent coupons.

Third. By said orders of confirmation it is provided that said purchasers shall have the right to assign their interest, as an entirety, or in parcels as said purchasers may determine, that upon filing such assignments with said special masters, said special masters shall make their deed or deeds of conveyance accordingly, and that in the event of any assignment by said purchasers of their said bid or interest or any conveyance by them of said railroad, equipment, franchises or property so purchased by them, all obligations incurred by said purchasers on account of the purchase of said railroad, equipment, franchises and property may be transferred to and assumed by such transferee or transferees, grantee or grantees, and thereupon said purchasers shall individually be discharged from all such obligations and liability.

Fourth. Thereafter, said Morton S. Paton and Richard B. Hartshorne executed and delivered to your petitioner an assignment bearing date the fifth day of June, 1900, of their said bid, and of all and singular their right, title, and interest, as such purchasers, in and to said railroad, equipment, franchises, and property purchased by them, and therein and thereby requested said special masters to make to said assignee a deed of said railroad, equipment, franchises and property. Said assignment has been duly filed with
93 said special masters.

Fifth. All obligations incurred by said purchasers on account of the purchase of said railroad, equipment, franchises and property, have been transferred to and have been assumed by your petitioner, said assignee of said bid, and your petitioner has become the successor in right and obligation, of said Morton S. Paton and Richard B. Hartshorne, as such purchasers, and has assumed and has become liable for all obligations incurred by said Paton and Hartshorne on account of the purchase of said railroad, equipment, franchises and property.

The petitioner therefore, prays that he may be made a party to this cause, and that said Morton S. Paton and Richard B. Hartshorne may be dismissed from the record as such purchasers, and be discharged from all obligations incurred by them on account of the purchase by them of said railroad, equipment, franchises and property.

JAMES N. WALLACE, *Petitioner.*

BUTLER, NOTMAN, JOLINE & MYNDERSE,
Solicitors for Petitioner.

UNITED STATES OF AMERICA,
State of New York, County of New York, } *ss:*

James N. Wallace, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition; that he has read the same and knows the contents thereof, and that the allegations therein contained, so far as they relate to his own acts, are true, and

so far as they relate to the acts of others, he believes them to be true; that in regard to all matters & things in the foregoing petition alleged which are not within the personal knowledge of deponent, deponent has been fully informed, and believes the same to be true.

JAMES N. WALLACE.

Subscribed and sworn to this 30th day of June, 1900.
[SEAL.]
CHAS. FLYNN,
Notary Public, New York County.

(Endorsement:) Filed. July 13, 1900. Irvin Belford, clerk.

94 (Entered) Friday, July 13, 1900.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant,
vs.
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents.
} No. 1205. In Equity.

CHARLES HAMLIN ET AL., Cross-complainants,
vs.
CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, Cross-respondents.
} Cross-bill.

Order.

Now this day comes James N. Wallace, by Butler, Notman, Joline & Mynderse, his solicitors and presents to the court his petition to be made a party to this cause as the successor in right and obligation to Morton S. Paton and Richard D. Hartshorne, the purchasers of the mortgaged premises, and in substitution for said purchasers, and that said purchasers be dismissed from the record as such purchasers and be discharged from all obligations incurred by them on account of the purchase by them of the railroad, equipment, franchises and property, constituting the mortgaged premises.

And also the complainant, Continental Trust Company of the City of New York, by Cary & Whitridge, its solicitors, and said Morton S. Paton, and Richard B. Hartshorne, by E. C. Henderson, their solicitor, and all and singular the matters contained in said petition being considered and by the court fully understood, it is

Ordered and decreed that said petition be, and the same hereby is, granted.

It is further ordered and decreed that said petitioner be, and he hereby is, made a party to this cause as the successor in right and obligation to said Paton and Hartshorne, as purchasers as aforesaid, and that he be bound by all proceedings taken herein since the 17th

day of April, 1900, including the order of confirmation of sale made on said last-named date; and it is further

95 Ordered and decreed that said Morton S. Paton and Richard B. Hartshorne be, and they hereby are, dismissed from the record as such purchasers, and that they be, and they hereby are, discharged from all obligations incurred by them on account of the purchase by them of said railroad, equipment, franchises and property constituting the mortgaged premises.

Dated July —, 1900.

(Endorsed:) "A. c t" (A. C. Thompson, judge.)

We consent to the entry of the foregoing order.
Dated June 30, 1900.

CARY & WHITRIDGE,
Sol'rs for Comp.
E. C. HENDERSON,
Sol'r for Paton & Hartshorne.

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant, *vs.* TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents.	No. 1205. In Equity.
CHARLES HAMLIN ET AL., Cross-complainants, *vs.* CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis & Kansas City Railroad Company, S. H. Kneeland, Cross-respondents.	Cross-bill.

In the matter of the petition of Toledo, St. Louis & Western Railroad Company.

To the circuit court of the United States for the northern district of Ohio, western division:

The petition of the Toledo, St. Louis and Western Railroad Company respectfully shows as follows:

First. Your petitioner is a corporation duly incorporated under and pursuant to the provisions of the act of the legislature of the State of Indiana approved March 3rd, 1865, entitled "An act
96 to authorize, regulate and confirm the sale of railroads, to enable purchasers of the same to form corporations and to exercise corporate powers, and to define their rights, powers and privileges, and to enable such corporations to purchase and con-

struct connecting and branch roads, and to operate and maintain the same," and the acts supplemental thereto and amendatory thereof.

Your petitioner has made the certificate required by the laws of the State of Ohio to enable your petitioner to transact the business for which it was incorporated, within said State of Ohio, and has forwarded the same for filing in the office of the secretary of state of the State of Ohio, together with a sworn copy of its articles of incorporation, and your petitioner has made the *sworn statement* required by the laws of the State of Illinois, to enable it to carry on the business for which it was incorporated, within said State of Illinois, and has forwarded the same for filing in the office of the secretary of state of the State of Illinois, together with a duly certified copy of its articles of incorporation.

Second. Your petitioner has acquired, or is about to acquire, and has made application to this court to be put in possession, or, all and singular the property formerly belonging to the Toledo, St. Louis and Kansas City Railroad Company, pursuant to the decree of foreclosure and sale entered in this cause, and dated the first day of April, 1898, and to the decree entered in this cause dated November 11th, 1899, modifying said decree of April 1st, 1898, and to the decretal order entered January 19th, 1900, in this cause, and to the further decree entered in this cause on said January 19th, 1900, re-entering and confirming said decree of November 11th, 1899.

Third. That heretofore, and on or about the 28th day of May, 1900 Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, duly filed with this court in this cause his certain petition, praying the decree of this court that the said receiver be entitled out of certain first-mortgage bonds and pre-
97 ferred stock and common stock of said Toledo, St. Louis and Kansas City Railroad Company in the hands of said Farmers' Loan and Trust Company, to be reimbursed for certain sums of money in said petition mentioned, with interest thereon, which said petitioner and his predecessors in the receivership in *in* the above-entitled cause of said Toledo, St. Louis and Kansas City Railroad Company had paid in respect of certain prior claims stated in said petition, whether for principal or interest, and that said bonds and stock, both preferred and common, towards satisfaction thereof, be delivered to the said petitioner to be by him delivered as part of the mortgaged premises, to the purchasers of the mortgaged premises purchased at said sale thereof, made under said decrees of foreclosure of said first mortgage of said Toledo, St. Louis and Kansas City Railroad Company, or that said securities be sold, and the proceeds thereof paid to said petitioner for payment by him to said purchasers of the mortgaged premises, or to be paid to said purchasers, and for such other and further relief as may be just. Your petitioner prays leave to refer to the original petition of the said Samuel Hunt, as receiver of the properties of the Toledo, St. Louis and Kansas City Railroad Company on file in the records of this court as aforesaid.

Fourth. That your petitioner has succeeded to all and every the rights of the Toledo, St. Louis and Kansas City Railroad Company,

said Samuel Hunt as receiver of the property of said Toledo, St. Louis and Kansas City Railroad Company and the purchasers at the sale under foreclosure of the line of railroad, properties, rights, privileges and franchises formerly belonging or appertaining to the said Toledo, St. Louis and Kansas City Railroad Company in respect to all the securities, properties and choses in action as stated and set forth in said petition of Samuel Hunt as receiver of the properties of the Toledo, St. Louis and Kansas City Railroad Company, *except as to* the line of railroad and appurtenant franchises and property situated in the State of Illinois, the title to which is to be conveyed by Toledo, and East St. Louis Railroad Company to your petitioner in pursuance of the plan of reorganization of the Toledo, St. Louis and Kansas City Railroad Company.

98 Your petitioner therefore prays that it may be made a party to this cause, and that it may be substituted as petitioner therein in the place and stead of Samuel Hunt as receiver of the Toledo, St. Louis and Kansas City Railroad Company, and that said Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company may be dismissed from the record as such petitioner; all without prejudice to any of the proceedings had or to be had herein.

TOLEDO, ST. LOUIS AND WESTERN RAILROAD COMPANY,
By ALBERT RATHBONE,
President, Petitioner.

[Corporate Seal.]

BUTLER, NOTMAN, JOLINE & MYNDERSE,
Solicitors for Petitioner.

UNITED STATES OF AMERICA, }
State of New York, County of New York, } *ss:*

Albert Rathbone, being duly sworn, deposes and says that he is the president of The Toledo, St. Louis and Western Railroad Company, the petitioner named in the foregoing petition. That he has read the same and knows the contents thereof, and that the allegations therein contained, so far as they relate to his own acts or acts of said Toledo, St. Louis and Western Railroad Company, are true, and so far as they relate to the acts of others, he believes them to be true. That in regard to all matters and things in the foregoing petition alleged which are not within the personal knowledge of deponent, deponent has been fully informed and believes the same to be true.

ALBERT RATHBONE.

Subscribed and sworn to this 25th day of July, 1900.
[SEAL.]
CHAS. FLYNN,
Notary Public, New York County.

(Endorsement:) No. 1205. U. S. circuit court, northern dist. of Ohio, western division. Continental Trust Co. *et al. vs.* Toledo, St.

Louis & Kansas City R. R. Co. *et al.* Petition for order of substitution. Butler, Notman, Joline & Mynderse, New York city. Filed. Jul- 27, 1900. Irvin Belford, clerk.

99 June term, A. D. 1900, to wit, July 28, 1900.

Present: The Honorable A. C. Thompson, U. S. district judge, sitting by designation.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant,
vs.
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents.
No. 1205. In Equity.

CHARLES HAMLIN ET AL., Cross-complainants,
vs.
CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, and S. H. Kneeland, Cross-respondents.
Cross-bill.

Order.

Now this day comes Toledo, St. Louis and Western Railroad Company by Butler, Notman, Joline & Mynderse, its solicitors and presents to this court its petition to be made a party to this cause and to be substituted as petitioner herein, in the matter of the petition of Samuel Hunt, receiver, against the Farmers' Loan and Trust Company and others, in the place and stead of Samuel Hunt, as receiver of the properties of the Toledo, St. Louis and Kansas City Railroad Company, without prejudice to the proceedings had or to be had herein.

And also comes Samuel Hunt, as receiver of the properties of the Toledo, St. Louis and Kansas City Railroad Company by Clarence Brown, his counsel, and all and singular the matters contained in said petition, being considered and by the court fully understood, it is

Ordered and decreed that said petition be, and the same hereby is, granted. It is further

Ordered and decreed that said petitioner, Toledo, St. Louis and Western Railroad Company be, and it hereby is, made a party to this cause and the petitioner, in the matter of the petition of Samuel Hunt, receiver, *vs.* Farmers' Loan and Trust Company and
100 others, as the successor in right to said Toledo, St. Louis and Kansas City Railroad Company, Samuel Hunt as receiver of the properties of the Toledo, St. Louis and Kansas City Railroad Company and the purchasers of the line of railroad, rights, privileges and franchises of the Toledo, St. Louis and Kansas City Rail-

road Company at the foreclosure sale thereof, and in the place and stead of the said Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, without prejudice to the proceedings had or to be had herein.

And thereupon came said petitioner and dismissed its said petition as against the defendants Morton S. Paton and Richard B. Hartshorne.

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant, *vs.* TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents.	No. 1205. In Equity.
CHARLES HAMLIN ET AL., Cross-complainants, *vs.* CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, Cross-respondents.	Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, against The Farmers' Loan & Trust Company *et al.*, respondents.

The answer of the Continental Trust Company of the City of New York, to the petition of Samuel Hunt, receiver, filed herein on the 28th day of May, 1900, respectfully shows as follows:

101 This respondent is informed and believes that the allegations of said petition are true, and submits its rights in the premises to the court and prays such decree as to the court shall seem just.

[Corporate Seal.]

CONTINENTAL TRUST COMPANY
OF THE CITY OF NEW YORK,
By GORDON MACDONALD, *V. P.*

CARY & WHITRIDGE,
Solicitors for said Trust Co.,
59 *Wall Street, New York.*
E. C. HENDERSON, *Of Counsel.*

UNITED STATES OF AMERICA,
Southern District of New York, County of New York, } *ss.:*

Gordon Macdonald being duly sworn, deposes and says that he is vice-president of The Continental Trust Company of the City of New

York, the above-named respondent; that he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

GORDON MACDONALD.

Sworn to before me this 26th day of June, 1900.
[SEAL.]

JOHN FRENCH,
Notary Public, New York County.

Endorsement: 1205. United States circuit court, for the nor. dist. of Ohio, W. D. Continental Trust Co. of New York *vs.* Toledo, St. Louis & Kansas City R. R. Co. *et al.*—Charles Hamlin *et al. vs.* Continental Trust Co. of New York. In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City R. R. Co. Answer of Continental Trust Co. Cary & Whitridge, solicitors for Continental Trust Co. 59 Wall street, New York, N. Y. Filed. Jul- 27, 1900. Irvin Belford, clerk.

102 In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant, *against* TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents.	No. 1205.	In Equity.
CHARLES HAMLIN ET AL., Cross-complainants, *against* CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, Cross-respondents.	Cross-bill.	

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, 1900.

Plea of Jules S. Bache to the Jurisdiction of the Court of His Person and of the Subject-matter of the said Petition of Samuel Hunt.

103 The above-named Jules S. Bache, specially appearing under protest for the purpose of this plea and for no other, says that this court has no jurisdiction of his person or of the subject-matter of the petition of Samuel Hunt as receiver above referred to, or to grant any of the relief prayed for in said petition, for that:

First. On the 17th day of May, 1900, he, the said Jules S. Bache, commenced an action in the supreme court of the State of New York in the county of New York, against Sylvester H. Kneeland, Toledo,

St. Louis and Kansas City Railroad Company and the Farmers' Loan & Trust Company by making personal service, pursuant to the statutes of the State of New York in such case made and provided, of the summons and complaint in said action (copies of which are hereunto annexed and marked respectively Exhibits "A" and "B" and made part hereof) on all of said defendants and each of them, within the county of New York and the State of New York.

Second. The matters and things alleged and set forth in said complaint are true.

Third. On the 23rd day of May, 1900, in said action he, the said Jules S. Bache, made personal service on all of the defendants in said action and each of them, of a notice of motion for an order appointing a receiver of all the property which has come into the possession of the Farmers' Loan & Trust Company, under and pursuant to a certain agreement dated June 1st, 1891, and made between the Toledo, St. Louis and Kansas City Railroad Company and Sylvester H. Kneeland and referred to in said petition of Samuel Hunt, to take and hold the same pending said action, subject to the further orders of the supreme court of the State of New York. On the return day of said motion—to wit, the 28th day of May 1900, the Farmers' Loan & Trust Company appeared by its attorneys Messrs. Turner, McClure & Rolston, and Sylvester H. Kneeland appeared by his attorneys, Messrs. Ford & Tuttle, and the Toledo, St. Louis and Kansas City Railroad Company failed to appear. Proof of due service of said notice
104 of motion on said railroad company was made, and thereupon an order was made on said 28th day of May, 1900, by the supreme court of the State of New York, and entered on the same day in the office of the clerk of the county of New York, granting said motion for the appointment of a receiver pending the trial of said action; a copy of said order is hereunto annexed, marked "Exhibit C" and made a part hereof. The Farmers' Loan & Trust Company, being the receiver named in said order, forthwith filed with the clerk of the county of New York its consent to act as such receiver and forthwith and on said 28th day of May, 1900, turned over and delivered to itself as such receiver all the property specified in said order—viz., one hundred and fifty-eight first-mortgage bonds of Toledo, St. Louis and Kansas City Railroad Company of the par value of one thousand dollars each, five thousand shares of the par value of one hundred dollars each of the preferred capital stock of said railroad company, and eleven thousand one hundred and sixty-nine shares of the par value of one hundred dollars each of the common capital stock of said railroad company; and said Farmers' Loan & Trust Company ever since has held and now holds said securities as such receiver subject to the further orders of the supreme court of the State of New York.

Fourth. The above-referred-to bonds and stocks, which said bonds and stocks are also referred to in said petition of Samuel Hunt, receiver, are now and ever since a time long prior to the commencement of the foreclosure suit and general creditors' suit in this court referred to in said petition and either of them, have been in the city

of New York in the State of New York and are not now nor ever have been in the northern district of Ohio or in the State of Ohio or elsewhere within the jurisdiction of this court; and this court has never by any order, decree or process issued in the said suits or otherwise taken possession of them or any of them, or exercised any control over them or any of them or appointed a receiver of them or
105 any of them, nor has the said Samuel Hunt nor any of his predecessors as receiver or receivers in said suits or otherwise taken or had or demanded possession of them or any of them, or exercised or sought to exercise any control over them or any of them, or made any claim or demand for or in respect to them or any of them. The said bonds and stock are not and never have been property or assets of the Toledo, St. Louis & Kansas City Railroad Company.

Fifth. All the acts and proceedings aforesaid were done and taken prior to the making of said petition of said Samuel Hunt, receiver, as well as prior to its filing in the office of the clerk of this court, and also prior to the making or filing or service on anybody of any order requiring a plea or answer to said petition, and prior to the making, entering, filing or service of the writings hereinafter referred to, marked Exhibits "D" and "E."

Sixth. The jurisdiction and power of this court to deal with the bonds and stocks in question, or with any of them, or to determine the conflicting claims and interests therein, or the claim now made by said receiver by said petition, if any he ever had, was not invoked prior to or concurrently with any of the acts or proceedings aforesaid in the said suit now pending in the supreme court of the State of New York, and that the action invoking the jurisdiction of this court, or attempting so to do, for the purpose of determining the claims and rights of the said receiver in or to said bonds and stocks, was not done or taken until after the said supreme court of the State of New York had come into the possession of said bonds and stocks by its receiver as aforesaid, for the purpose of adjudicating the rights, claims and interests of all parties therein.

Seventh. In said action, commenced by him in the supreme court of the State of New York on the 17th day of May, 1900, here-
106 inbefore referred to, the Farmers' Loan & Trust Company and Sylvester H. Kneeland have appeared by their respective attorneys, and the Toledo, St. Louis and Kansas City Railroad Company has failed to appear; neither the Farmers' Loan & Trust Company nor Sylvester H. Kneeland has as yet answered said complaint, or demurred or otherwise pleaded thereto, and said action is now pending and wholly undetermined.

Eighth. He, the said Jules S. Bache, is now, and since a time long prior to the commencement of the general creditors' suit, and of the foreclosure suit in this court referred to in the said petition of Samuel Hunt, receiver, and each of them, has been continuously a citizen of the United States and of the State of New York, and a resident and inhabitant of the city and county of New York in said State of New York, and has never been a citizen, resident or inhabitant of the State of Ohio or domiciled therein.

Ninth. On the 1st day of June, 1900, he received through the United States mail at the said city of New York, and not elsewhere, a writing purporting to be a copy of an order made by Hon. A. C. Thompson, U. S. district judge of the southern district of Ohio, in chambers, at the city of Cleveland, Ohio, a copy of which, marked "Exhibit D," is hereunto annexed and made a part hereof. The said judge had no lawful authority, power or jurisdiction to make said supposed order, and the same is inoperative, null and void. No process has been issued upon said petition or served upon him within the State of Ohio or elsewhere, nor has any notice of the filing of said petition, or of any hearing thereon, or of any proceedings taken or to be taken thereunder or thereon, or requiring him to answer, demur or plead to said petition, been served upon him in the State of Ohio or elsewhere, nor has any order requiring him to answer, demur or plead to said petition, or to appear thereto, in anywise been served upon him in the State of Ohio or elsewhere,
107 nor has he at any time or in anywise appeared to said petition either in person or by agent, attorney, solicitor or counsel, or in anywise or at any time consented to the exercise by this court of jurisdiction of his person or of the subject-matter of said petition, or any part thereof, or in anywise, or at any time, waived or relinquished the objections he now makes to the jurisdiction of this court, or any of them.

Tenth. The Farmers' Loan & Trust Company mentioned in said petition now is, and continuously since a long time prior to the commencement of said general creditors' suit and said foreclosure suit in this court, and each of them, mentioned in said petition, has been, a corporation duly organized and existing under and by virtue of the laws of the State of New York and a citizen of that State, and a resident and inhabitant of the city and county of New York, in said State, and is not now, and never has been, a corporation citizen, resident or inhabitant of the State of Ohio, or domiciled therein.

Eleventh. On the 11th day of June, 1900, the said Farmers' Loan & Trust Company received through the United States mail at the city of New York, and not elsewhere, a writing purporting to be a copy of an order made by Hon. A. J. Ricks, U. S. district judge in chambers, a copy of which, marked "Exhibit E," is hereunto annexed and made a part hereof. The said judge had no lawful authority, power or jurisdiction to make said supposed order, and the same is inoperative, null and void. No process has been issued upon said petition or served upon it within the State of Ohio or elsewhere, nor has any notice of the filing of said petition, or of any hearing thereon, or of any proceeding taken or to be taken thereunder or thereon, or requiring it to plead or answer to said petition, been served upon it in the State of Ohio or elsewhere, nor has any order requiring it to answer, demur or plead to said petition, or to appear thereto in anywise, been served upon it in the State of
108 Ohio or elsewhere, nor has it at any time or in anywise appeared to said petition, either in person or by agent, officer, attorney, solicitor or counsel, or in anywise or at any time consented to the exercise by this court of jurisdiction of its person or of the

subject-matter of said petition, or any part thereof, or in anywise or at any time waived or relinquished the objections he, the said Bache, now makes to the jurisdiction of this court, or any of them.

Twelfth. Sylvester H. Kneeland, mentioned in the petition, is now and since a time long prior to the commencement of the general creditors' suit and of the foreclosure suit in this court, referred to in the said petition of Samuel Hunt, receiver, and each of them, has been continuously a citizen of the United States and of the State of New York, and a resident and inhabitant of the city and county of New York, in said State of New York, and has never been a citizen, resident or inhabitant of the State of Ohio or domiciled therein.

Thirteenth. On the 1st day of June, 1900, he, the said Kneeland, received through the United States mail, at the city of New York and not elsewhere, a writing purporting to be a copy of an order made by Hon. A. C. Thompson, U. S. district judge of the southern district of Ohio, in chambers, at the city of Cleveland, Ohio, a copy of which, marked Exhibit "D," is hereunto annexed and made part hereof. The said judge had no lawful authority, power or jurisdiction to make said supposed order, and the same is inoperative, null and void. No process has been issued upon said petition or served upon him, the said Kneeland, within the State of Ohio or elsewhere, nor has any notice of the filing of said petition or of any hearing thereon, or of any proceeding taken or to be taken thereunder or thereon, or requiring him to answer, demur or plead to said petition, been served upon him, the said Kneeland, in the State of Ohio or elsewhere, nor has any order requiring him, the said
109 Kneeland, to answer or plead to said petition or to appear thereto in anywise been served upon him, the said Kneeland, in the State of Ohio or elsewhere, nor has he, the said Kneeland, at any time or in anywise appeared to said petition, either in person or by agent, attorney, solicitor or counsel, or in anywise or at any time consented to the exercise by the court of jurisdiction of his person or of the subject-matter of said petition, or of any part thereof, or in anywise or at any time, waived or relinquished the objections he, the said Bache, now makes to the jurisdiction of this court, or any of them.

Fourteenth. Morton S. Paton and Richard B. Hartshorne, mentioned in said petition of Samuel Hunt, receiver, and each of them, are now, and since a time long prior to the commencement of the general creditors' suit and of the foreclosure suit in this court referred to in the said petition, have been continuously citizens of the United States and of the State of New York and residents and inhabitants of the city and county of New York in said State of New York, and have never been citizens, residents or inhabitants of the State of Ohio or domiciled therein.

Fifteenth. By reason of the facts aforesaid, said supreme court of the State of New York has exclusive jurisdiction to deal with said bonds and stocks and to determine all conflicting claims of title to the same, or interests therein, including the claim now made by said receiver by said petition.

Wherefore, he, the said Jules S. Bache, prays the judgment of this

court whether he ought to be required to make any other or further answer to the said petition, and prays that said petition be dismissed for want of jurisdiction, with costs in that behalf most wrongfully sustained.

JULES S. BACHE.

SPIEGELBERG & WISE,
Solicitors for Jules S. Bache.

110 UNITED STATES OF AMERICA, }
State of New York, Southern District of New York, } *ss.:*

Jules S. Bache, being duly sworn, deposes and says that he is the same Jules S. Bache named in the foregoing plea, and that such plea is true in point of fact and not interposed for delay.

JULES S. BACHE.

Subscribed and sworn to before me this 26th day of July, 1900.

[SEAL.] J. MANHEIMER,
Notary Public, New York County.

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

F. SPIEGELBERG,
Counsel for Jules S. Bache.

111 EXHIBIT A.

New York Supreme Court, County of New York.

JULES S. BACHE, Plaintiff,
against
SYLVESTER H. KNEELAND, THE TOLEDO, ST. LOUIS & KANSAS CITY RAILROAD COMPANY, and THE FARMERS' LOAN & TRUST COMPANY, Defendants. } Summons.

To the above-named defendants and each of them:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and, in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated May 17, 1900.

SPIEGELBERG & WISE,
Plaintiff's Attorneys.

Office and post-office address, No. 44 Broad street, borough of Manhattan, city of New York.

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Exhibit B.

New York Supreme Court, County of New York.

Jules S. Bache, Plaintiff,
vs.
Sylvester H. Kneeland, The Toledo, St. Louis & Kansas City Railroad Company, and The Farmers' Loan & Trust Company, Defendants.

The above-named plaintiff, Jules S. Bache, by Spiegelberg & Wise, his attorneys, complains of the defendants and respectfully shows to this court:

First. That the plaintiff herein, heretofore and on the 19th day of July, 1894, in the supreme court of the State of New York in and for the county of New York, recovered a judgment against the defendants Sylvester H. Kneeland and The Toledo, St. Louis and Kansas City Railroad Company for forty-three thousand two hundred and seventy-eight $\frac{64}{100}$ ($43,278.64) dollars in an action wherein this plaintiff was plaintiff and the defendants herein, The Toledo, St. Louis and Kansas City Railroad Company and Sylvester H. Kneeland, were the defendants, and that on the same day—to wit, the 19th day of July, 1894—the said judgment was duly docketed in the office of the clerk of the county of New York.

Second. That on or about the 20th day of July, 1894, an execution upon said judgment was duly issued against the real and personal property of each of the said defendants The Toledo, St.
113 Louis and Kansas City Railroad Company and Sylvester H. Kneeland to the sheriff of the city and county of New York, in which county the defendant Sylvester H. Kneeland then resided and still resides, and the defendant The Toledo, St. Louis and Kansas City Railroad Company then had and still has an office for the regular transaction of business.

Third. That before the commencement of this action the said execution was duly returned by said sheriff wholly unsatisfied, and there is now due the plaintiff on said judgment the sum of forty-three thousand two hundred and seventy-eight $\frac{64}{100}$ ($43,278.64) dollars, with interest from the 19th day of July, 1894.

Fourth. That the plaintiff herein, heretofore and on or about the 19th day of May, 1893, in the supreme court of the State of New York, in and for the county of New York, recovered a judgment against the defendants Sylvester H. Kneeland and The Toledo, St. Louis & Kansas City Railroad Company for seventy-two thousand and five and $\frac{65}{100}$ ($72,005.65) dollars in an action wherein this plaintiff was plaintiff, and the defendants herein, The Toledo, St. Louis & Kansas City Railroad Company and Sylvester H. Kneeland, were the defendants, and that on the same day—to wit, the 19th day of May, 1893—said judgment was duly docketed in the office of the clerk of the county of New York.

Fifth. That on or about the 15th day of May, 1900, an execution

upon said last-mentioned judgment was duly issued against the real and personal property of each of the said defendants The Toledo, St. Louis & Kansas City Railroad Company and Sylvester H. Kneeland to the sheriff of the city and county of New York, in which county the defendant Sylvester H. Kneeland then resided and still resides, and the defendant The Toledo, St. Louis & Kansas City Railroad Company then had and still has an office for the regular transaction of business.

Sixth. That before the commencement of this action said
114 last-mentioned execution was duly returned by the said sheriff wholly unsatisfied, and there is now due the plaintiff on said judgment the said sum of seventy-two thousand and five $\frac{65}{100}$ ($72,005.65) dollars, with interest thereon from the 19th day of May, 1893.

Seventh. Plaintiff further alleges, on information and belief, that the defendant The Toledo, St. Louis & Kansas City Railroad Company is a foreign corporation organized under the laws of the State of Ohio, Indiana and Illinois, and that the defendant The Farmers' Loan & Trust Company is a domestic corporation.

Eighth. The plaintiff alleges, on information and belief, that some time during the year of 1886, the exact date the plaintiff being unable to state, the defendant Sylvester H. Kneeland was the owner and holder of, among other property, one hundred and fifty-eight first-mortgage bonds of the Toledo, St. Louis & Kansas City Railroad Company, of the par value of one thousand ($1,000) dollars each, and of eleven thousand (11,000) shares of said company's common capital stock, of the par value of one hundred dollars ($100) each, and of five hundred (500) shares of said company's preferred capital stock of the par value of one hundred dollars ($100) each. That thereafter, and some time during the year of 1886, in pursuance of certain agreements dated January 23rd, 1886, the defendant Sylvester H. Kneeland transferred and delivered, among other property, his said property hereinbefore specified, to one Robert G. Ingersoll and one Isaac W. White, trustees, to hold said property for said defendant Sylvester H. Kneeland pursuant to and under said agreements of January 23rd, 1886.

Ninth. The plaintiff further alleges, on information and belief, that controversies having arisen concerning the terms of said agreements of January 23rd, 1886, and the rights and obligations of the defendant Sylvester H. Kneeland thereunder, the defendants The Toledo, St. Louis & Kansas City Railroad Company and Sylvester
H. Kneeland on or about the first day of June, 1891, entered
115 into an agreement wherein and whereby they arranged and settled said controversies, and wherein and whereby, among other things, they mutually agreed that they would consent and request that said two trustees under said agreements of January 23d, 1886, should deliver certain property hereinafter more particularly specified, which said trustees then held in trust for the defendant Sylvester H. Kneeland as aforesaid, and which formed a portion of the property in the next preceding paragraph of the complaint referred to, to the defendant The Farmers' Loan & Trust

Company upon the execution by the said trust company of a declaration of trust to the effect that it agrees to receive and hold said property in accordance with the trust created by said agreement of June 1st, 1891, and that the said trust company should thereupon hold the same in trust as security for the payment of certain charges and claims against and liens on the line of railroad then operated by the said defendant The Toledo, St. Louis & Kansas City Railroad Company, and upon the further trust to pay over and deliver said property from time to time to the defendant Sylvester H. Kneeland, and upon the payment of said charges, claims and liens.

Tenth. That said property referred to in said agreement, as plaintiff is informed and believes, consisted of one hundred and thirty-two (132) first-mortgage bonds of the Toledo, St. Louis & Kansas City Railroad Company of the par value of one thousand (1,000) dollars each, and of eleven thousand (11,000) shares of its common capital stock of the par value of one hundred ($100) dollars each, and of five hundred (500) shares of its preferred capital stock of the par value of one hundred ($100) dollars each.

Eleventh. Plaintiff further alleges on information and belief that the defendant The Farmers' Loan and Trust Company accepted said trust conferred upon it by said agreement dated June 1st, 1891, and that by an instrument in writing dated June 2d, 1891, said trust company agreed to receive, hold and deliver such securities
116 as might be delivered to it under said agreement in accordance with the terms thereof, and that on payment of the liens and claims contemplated by said agreement of June 1, 1891, it would make deliveries of said securities to the defendant Sylvester H. Kneeland upon the certificate of the president of the defendant The Toledo, St. Louis & Kansas City Railroad Company, and of the defendant Sylvester H. Kneeland, and of the clerk of the circuit court of the United States for the district of Indiana, showing that the claims paid were claims contemplated by said agreement of June 1, 1891.

Twelfth. Plaintiff further alleges, on information and belief, that upon the execution by the defendant The Farmers' Loan & Trust Company of the said instrument in writing dated the 2nd day of June, 1891, the trustees hereinbefore mentioned delivered and transferred the said property above referred to—to wit, one hundred and thirty-two (132) first-mortgage bonds of the defendant The Toledo, St. Louis & Kansas City Railroad Company, and eleven thousand (11,000) shares of its common stock, and five hundred (500) shares of its preferred stock—to the defendant The Farmers' Loan & Trust Company, to be held by it in trust under and pursuant to said agreement of June 1, 1891, and that, as the plaintiff is informed and believes, said securities have ever since been and still are in the possession of the defendant The Farmers' Loan & Trust Company.

Thirteenth. The plaintiff further alleges on information and belief, that there were attached to said one hundred and thirty-two (132) bonds in the next preceding paragraph of this complaint re-

ferred to interest coupons of thirty dollars ($30) each payable on the first day of June and December in each and every year until the maturity of said bonds, but plaintiff is not able to ascertain and, therefore, unable to state whether or not the defendant The Farmers' Loan & Trust Company presented for payment the said coupons when they severally became due prior to the default in the payment thereof as hereinafter stated and whether or not said trust company collected said coupons and now retains the proceeds thereof.

117 Fourteenth. The plaintiff further alleges on information and belief that on or about the 1st day of June, 1891, the said eleven thousand (11,000) shares of the common capital stock of the defendant The Toledo, St. Louis & Kansas City Railroad Company stood on the books of said company in the names of Isaac W. White and Clarence Brown as trustees, and that upon the delivery of said stock to the defendant The Farmers' Loan & Trust Company, as hereinabove referred to, said shares of stock were on the books of the defendant The Toledo, St. Louis & Kansas City Railroad Company, transferred to the defendant The Farmers' Loan & Trust Company and certificates for said stock were issued in the name of the defendant The Farmers' Loan & Trust Company as trustee.

Fifteenth. Plaintiff further alleges on information and belief that thereafter and on or about some time during the latter part of June, 1893, additional twenty-six (26) of the Toledo, St. Louis & Kansas City Railroad Company first-mortgage bonds of the par value of one thousand ($1,000) dollars each, said bonds being a portion of the bonds in the eighth paragraph of said complaint referred to, were delivered and transferred to the defendant The Farmers' Loan & Trust Company to be held in trust by it and to be delivered by it under and pursuant to the terms and conditions of said agreement of June 1, 1891, hereinabove referred to, and that the defendant The Farmers' Loan & Trust Company received said bonds and accepted the same on the same terms and conditions as expressed in said instrument in writing executed by it on June 2nd, 1891, hereinabove referred to, and that said thirty-two (32) first-mortgage bonds have ever since been, and still are, in the possession of the defendant The Farmers' Loan & Trust Company.

Sixteenth. Plaintiff further alleges, on information and belief, that heretofore and on or about the 19th day of June, 1886, the defendant The Toledo, St. Louis & Kansas City Railroad Company executed, acknowledged and delivered to two trustees a cer-

118 tain indenture of mortgage or deed of trust, whereby it conveyed to the said two trustees all its property, more specifically stated in said deed of trust, for the purpose of securing the payment of its first-mortgage bonds to the amount of nine million eight hundred thousand ($9,800,000) dollars, consisting of nine thousand eight hundred (9,800) bonds, by each of which said bonds the defendant The Toledo, St. Louis & Kansas City Railroad Company promised to pay to bearer, or registered owner thereof, on the first day of June, 1916, one thousand dollars ($1,000), with interest

thereon from the first day of June, 1886, at six per centum per annum, payable semi-annually on the first days of June and December of each year. Of the nine million eight hundred thousand dollars ($9,800,000) of bonds so authorized, nine million dollars ($9,000,000) of bonds thereof were issued. Default having been made in the payment of the interest on said bonds due on the first day of June, 1893, such proceedings were had that on the first day of April, 1898, a decree was rendered and filed in the office of the clerk of the circuit court of the United States for the western division of the northern district of Ohio, said court being a court of competent jurisdiction, in an action entitled "Continental Trust Company of the City of New York *v.* The Toledo, St. Louis & Kansas City Railroad Company and others" to which said action the defendants The Toledo, St. Louis & Kansas City Railroad Company and Sylvester H. Kneeland were parties wherein and whereby it was, among other things, decreed that the Toledo, St. Louis & Kansas City Railroad Company pay within sixty days after the entry of said decree the amount due on its outstanding first-mortgage bonds and coupons, and that in default of such payment the property subject to such first-mortgage bonds be sold at public auction and that out of the funds arising from said sale there should be paid certain liens and claims, said liens and claims thus ordered to be paid being the same liens and claims hereinabove referred to and contemplated to
119 be paid by said agreement of June 1, 1891. By said decree of April 1, 1898, it was among other things found and decreed that the principal of all said bonds issued by the Toledo, St. Louis and Kansas City Railroad Company was due and payable, and that there was due and owing in respect of said first-mortgage bonds at the date of the entry of the decree the principal thereof—to wit, nine million dollars ($9,000,000)—and the interest thereon, amounting in all to twelve million twenty-eight thousand five hundred ($12,028,500) dollars. That such proceedings were *were* further had in said action, that on November 13th, 1899, a decree was entered and filed in the office of said clerk affirming said decree of April 1, 1898, and that on January 19th, 1900, a further decree was entered in the office of said clerk re-entering said decree of November 13th, 1899.

Seventeenth. Plaintiff further alleges on information and belief that the said liens and claims hereinabove referred to have been and are paid, and have been and are discharged.

Eighteenth. Plaintiff further alleges that the said one hundred and fifty-eight (158) first-mortgage bonds of the Toledo, St. Louis & Kansas City Railroad Company which were delivered and transferred to the defendant The Farmers' Loan & Trust Company in trust, as hereinabove specified, are a portion of the nine thousand (9,000) bonds issued by the Toledo, St. Louis & Kansas City Railroad Company, the principal and interest of which were found and decreed by said decree of April 1st, 1898, to be due and owing.

Nineteenth. Plaintiff further alleges on information and belief that default having been made by the Toledo, St. Louis & Kansas City Railroad Company in payment of the amount found to be due

from it under and pursuant to said decree of April 1, 1898, the property of said railroad company was, pursuant to said decree of April 1, 1898, and said decree of November 13, 1899, affirming said decree of April 1, 1898, and said decree of January 19, 1900, re-entering said decree of November 13, 1899, on or about the 27th day of March, 1900, offered for sale to the highest bidder and
120 sold for twelve million two hundred thousand dollars ($12,200,000), and that said sale was subsequently confirmed.

Twentieth. Plaintiff is informed and believes that, by reason of the facts hereinabove stated, the property transferred to the defendants The Farmers' Loan & Trust Company under and pursuant to the agreement of June 1, 1891, reverts to the defendant Sylvester H. Kneeland, freed and discharged from any obligation on his part to be performed, but that it has become impossible, by reason of the facts hereinbefore referred to, for the defendant The Farmers' Loan & Trust Company to deliver said property to the defendant Sylvester H. Kneeland in accordance with the terms and conditions of said agreement of June 1, 1891, and of the declaration of trust executed by said defendant The Farmers' Loan & Trust Company on June 2, 1891, and the plaintiff further alleges on information and belief that there is danger that the defendants The Toledo, St. Louis & Kansas City Railroad Company and Sylvester H. Kneeland will agree to cancel and declare at an end said agreement of June 1st, 1891, and direct the defendant The Farmers' Loan & Trust Company to turn over said property held in trust by it as aforesaid to the defendants The Toledo, St. Louis & Kansas City Railroad Company and Sylvester H. Kneeland, or either of them, and that said property be removed by reason thereof from the jurisdiction of the court and beyond the reach of the plaintiff and the other creditors of said two defendants or either of them.

Twenty-first. The plaintiff further alleges that if the defendant The Toledo, St. Louis & Kansas City Railroad Company has any right, title or interest, whether legal or equitable, in or to said property held by the defendant The Farmers' Loan & Trust Company as aforesaid, such right, title or interest is subject and inferior to the claim of this plaintiff by reason of his said two judgments hereinabove specified.

Twenty-second. The plaintiff further alleges that the value
121 of the property held by the defendant The Farmers' Loan & Trust Company as aforesaid exceeds the sum of one hundred and eighty thousand dollars ($180,000).

Twenty-third. That said first-mortgage bonds of the Toledo, St. Louis & Kansas City Railroad Company which are in possession of the defendant The Farmers' Loan & Trust Company under and pursuant to the terms and agreement hereinbefore set out are entitled to share in the proceeds of the sale of the property of the Toledo, St. Louis & Kansas City Railroad Company under and pursuant to said decree of April 1, 1898, and the said other decrees hereinbefore mentioned, and that the appointment of a receiver to whom said property shall be turned over by the order of this court is necessary to properly secure the payment of the *pro rata* share of the proceeds of

said sale due on said bonds and coupons, and to retain the proceeds thereof subject to the order of this court, for the benefit of the creditors of said defendants The Toledo, St. Louis & Kansas City Railroad Company and Sylvester H. Kneeland, or either of them, and especially for the benefit of this plaintiff.

Twenty-fourth. Plaintiff further alleges on information and belief that the defendant The Farmers' Loan & Trust Company claims a lien on said trust fund held by it as aforesaid for its fees and commissions for the administration thereof.

Twenty-fifth. Plaintiff further alleges that he has not adequate remedy at law, and will be wholly without redress in the premises unless he can reach the said property of the said defendants The Toledo, St. Louis & Kansas City Railroad Company and Sylvester H. Kneeland, or either of them, by the aid of a court of equity.

Wherefore, the plaintiff demands judgment:

First. That the agreement of June 1, 1891, specified in this complaint, or so much thereof as created a trust by and under the terms of which the property in this complaint specified was transferred to the defendant The Farmers' Loan & Trust Company, be adjudged to be terminated and at an end.

122 Second. That the right, title or interest, whether legal or equitable, which the defendants The Toledo, St. Louis & Kansas City Railroad Company and Sylvester H. Kneeland or either of them, may have in or to the property held by the defendant The Farmers' Loan & Trust Company, as in this complaint specified, shall be adjudged and declared subject to the lien and liens of this plaintiff by reason of the judgments recovered by him against said defendants, as hereinbefore specified.

Third. That the defendant The Farmers' Loan & Trust Company account to this plaintiff for all the property which has come into its possession, as in this complaint specified, and that the defendants be adjudged to apply to the amount of the plaintiff's judgment mentioned and described in this complaint, with interest thereon, said property held as aforesaid by the said defendant The Farmers' Loan & Trust Company.

Fourth. That a receiver of all the said property be appointed, and that the defendants be directed by this court to deliver and transfer to said receiver all of said property, and that for the purpose of such delivery and transfer the defendant The Farmers' Loan & Trust Company duly endorse the certificates of stock standing in its name as trustee as aforesaid, and that the said receiver so appointed having come into possession of all of said property be directed to sell the same and all thereof, or to otherwise dispose of the same under the order of this court, and out of the proceeds thereof to pay to the defendant The Farmers' Loan & Trust Company such compensation as the court may direct for the performance of its trust, and after such payments to pay the costs and disbursements of this action, and after such payments to pay the said judgments mentioned and described in this complaint, with interest thereon, and as to the residue of said proceeds, if any, to hold the same subject to the further order of this court.

Fifth. That the defendant The Farmers' Loan & Trust Company be in the meantime enjoined from paying over and delivering to the defendants The Toledo, St. Louis & Kansas City Railroad Company and Sylvester H. Kneeland, or either of them, or to any other person, persons or corporation, and the defendants The Toledo, St. Louis & Kansas City Railroad Company and Sylvester H. Kneeland and each of them be enjoined from demanding of and receiving from said defendant The Farmers' Loan & Trust Company any or all of said property, and that all the defendants be enjoined from in any manner interfering therewith except to preserve the same and to deliver the same to the receiver herein appointed.

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Sixth. For such other or further relief, or both, as may be just and equitable and proper in the premises.

SPIEGELBERG & WISE,
Attorneys for the Plaintiff, 44 *Broad Street*,
Borough of Manhattan, New York City.

STATE OF NEW YORK, }
County of New York, } *ss.:*

Jules S. Bache, being duly sworn, says that he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

JULES S. BACHE.

Sworn to before me this 17th day of May, 1900.

Z. ROSENFIELD,
Notary Public (97), *New York County.*

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EXHIBIT C.

At a special term of the supreme court of the State of New York, held at part I thereof, at the county court-house in the borough of Manhattan, city of New York, on the 28th day of May, 1900.

Present: Hon. David Leventritt, justice.

JULES S. BACHE
against
SYLVESTER H. KNEELAND, THE TOLEDO, ST. LOUIS & KANSAS City Railroad Company, and The Farmers' Loan and Trust Company.

A motion having been made in the above-entitled action on the part of the plaintiff for an order appointing a receiver herein of all the property which has come into the possession of the defendant The Farmers' Loan & Trust Company, under and pursuant to a certain agreement dated June 1st, 1891, and made between the

Toledo, St. Louis and Kansas City Railroad Company and Sylvester H. Kneeland, which said agreement and said property are more particularly specified in the complaint herein, to take and hold the same pending this action, subject to the further orders of this court, and said motion having come on to be heard, and the defendants, The Farmers' Loan & Trust Company appearing by its attorneys Messrs. Turner, McClure & Rolston and submitting a memorandum, and the defendant Sylvester H. Kneeland appearing by his attorneys Messrs. Ford & Tuttle, and proof of due service of the
125 summons and complaint and the notice of said motion, together with the papers on which the same was made, having been made by the affidavit of F. Spiegelberg, verified May 28th, 1900.

Now therefore, on reading and filing said notice of motion and the papers on which said motion was made—to wit, the summons and complaint herein, verified the 17th day of May, 1900, and the affidavits of Jules S. Bache and F. Spiegelberg, both of which are verified the 23rd day of May, 1900, and said memorandum of the Farmers' Loan & Trust Company; and after hearing F. Spiegelberg, Esq., of counsel for the plaintiff, in support of said motion, and Messrs. Turner, McClure & Rolston, attorneys for the Farmers' Loan & Trust Company, and Messrs. Ford & Tuttle, attorneys for the defendant Sylvester H. Kneeland, not opposing:

Now, on motion of Spiegelberg & Wise, attorneys for the plaintiff, it is

Ordered that said motion for the appointment of a receiver pending the trial of this action be, and the same hereby is, in all respects granted; and it is further

Ordered that the Farmers' Loan and Trust Company, a corporation duly organized and existing under the laws of the State of New York, and qualified and authorized to act, be, and the same hereby is appointed receiver during the pendency of this action, of all the property hereinabove referred to, and of all the right, title or interest, whether legal or equitable, which the defendant Sylvester H. Kneeland and the defendant, The Toledo, St. Louis and Kansas City Railroad Company or either of them have or may have in or to said property, said property consisting more particularly of one hundred and fifty-eight (158) first-mortgage bonds of the par value of one thousand dollars (1,000) each of Toledo, St. Louis & Kansas City Railroad Company, together with the semi-annual interest coupons of thirty (830) dollars each thereunto attached, eleven thou-
126 sand six hundred and ninety (11,690) shares of the common capital stock of the par value of one hundred (100) dollars each of said railroad company, and of five thousand (5,000) shares of the preferred capital stock of the par value of one hundred (100) dollars each of said railroad company, together with all other property of whatsoever nature, if any, which the defendant The Farmers' Loan & Trust Company now holds under and pursuant to the terms of said agreement of June 1st, 1891; and it is further

Ordered, that the said receiver hold said property subject to

the further order of this court and have the usual powers appertaining to the office of receiver; and it is further

Ordered, that the defendant The Farmers' Loan & Trust Company forthwith, upon filing its consent to act as receiver as aforesaid, turn over and deliver, or cause to be turned over or delivered, to itself as receiver, all the property hereinbefore specified; and it is further

Ordered, that the said receiver and any party hereto may, at any time, upon proper notice to all the parties who shall or may have appeared in this action, apply to this court for further and other directions and for power to enable the said receiver to properly fulfill its duties.

Enter.

D. L., *J.*

127 EXHIBIT D.

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant, *vs.* TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents.	No. 1205.	In Equity.
CHARLES HAMLIN ET AL., Cross-complainants, *vs.* CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, Cross-respondents.	Cross-bill.	

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company.

128 This day comes Samuel Hunt, receiver of the Toledo, St. Louis and Kansas City Railroad Company, by Clarence Brown, his solicitor, and presents to the court his intervening petition filed herein on the 28th day of May, 1900, upon consideration whereof, and upon motion of his solicitor it is

Ordered, that the complainant Continental Trust Company of the City of New York, the respondents Toledo, St. Louis and Kansas City Railroad Company and Jules S. Bache, the cross-respondent Sylvester H. Kneeland, and Morton S. Paton and Richard B. Hartshorne, the purchasers of the mortgaged premises demur or plead to said petition or answer the same within twenty days from the date of the entry of this order; and it is further

Ordered that the clerk of this court forthwith mail to said Con-

tinental Trust Company of the City of New York, Toledo, St. Louis and Kansas City Railroad Company, Sylvester H. Kneeland, Morton S. Paton and Richard B. Hartshorne, addressed to them at their several offices, certified copies of this order.

Dated May 29th, 1900, at chambers, in the city of Cleveland, O.

A. C. THOMPSON,
U. S. Dist. Judge, Sitting by Designation.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division, } *ss:*

I, Irvin Belford, clerk of the circuit court of the United States within and for said district and division, do hereby certify that the foregoing is a true and complete copy of the order entered in the therein-entitled cause on May 31st, 1900.

Witness my official signature and the seal of said court, at Toledo, in said district, this 31st day of May, A. D. 1900, and the 124th year of the Independence of the United States of America.

[SEAL.]

IRVIN BELFORD, *Clerk,*
By J. W. WILSON,
Deputy Clerk.

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EXHIBIT E.

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant, *vs.* TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents.	No. 1205. In Equity.
CHARLES HAMLIN ET AL., Cross-complainants, *vs.* CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, Cross-respondents.	Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company.

130 This day comes Samuel Hunt, receiver of the Toledo, St. Louis and Kansas City Railroad Company, by Clarence Brown, his solicitor, and presents to the court his intervening petition filed herein on the 28th day of May, 1900, upon consideration whereof and on motion of his solicitor, it is

Ordered that the Farmers' Loan & Trust Company demur, or plead

to said petition, or answer the same with twenty (20) days from the day of the entry of this order; and it is further

Ordered that the clerk of this court forthwith mail to said Farmers' Loan & Trust Company, addressed to it, at its office, a certified copy of this order.

Dated June 9th, 1900, at chambers in the city of Toledo, Ohio.

A. J. RICKS,
United States District Judge.

THE UNITED STATES OF AMERICA, *Northern District of Ohio, Western Division,* } ss:

I, Irvin Belford, clerk of the circuit court of the United States within and for said district and division, do hereby certify that the foregoing is a true and complete copy of the order made in the therein-entitled cause on June 9th, 1900.

Witness my official signature and the seal of said court at Toledo, in said district this 9th day of June A. D. 1900, and the 124th year of the Independence of the United States of America.

[SEAL.]

IRVIN BELFORD, *Clerk,*
By J. W. WILSON,
Deputy Clerk.

(Endorsement:) Filed, July 28, 1900. Irvin Belford, clerk.

131 United States Circuit Court, Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, Survivor of John M. Butler, Complainant, *vs.* TOLEDO, ST. LOUIS AND KANSAS CITY RAILROAD COMPANY, Joseph S. Stout, Randolph F. Purdy, Ferdinand E. Canda, Charles T. Harbeck, Jules S. Bache, Oliver & Roberts Wire Co., George B. Cass, Oliver Adams, Charles Hamlin, Hannibal E. Hamlin, Frank Hamlin, and Ellen V. Hamlin, Respondents.	No. 1205.
CHARLES HAMLIN, HANNIBAL E. HAMLIN, FRANK HAMLIN, and Ellen V. Hamlin, Complainants, *vs.* CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, Cross-respondents.	Cross-bill.

Petition of Samuel Hunt, Receiver.

Plea of Jules S. Bache denying the jurisdiction of the court.

The facts shown by the record in this suit necessary to be considered, upon this hearing, may be summarised as follows:

The line of railroad involved in this litigation was, prior to the

30″ day of December, 1885, owned by the Toledo, Cincinnati & St. Louis Railroad Company, and was afterwards owned by the Toledo, St. Louis and Kansas City Railroad Company and is now owned by the Toledo, St. Louis & Western Railroad Company. On the 30″ day of December, 1885, under a decree of foreclosure, it was sold, as the property of the Toledo, Cincinnati & St. Louis Railroad Company to Sylvester H. Kneeland, who purchased it, as the representative of the reorganization committees of certain bondholders. The Toledo, St. Louis and Kansas City Railroad Company, was thereupon organized and the railroad was conveyed to it by Kneeland, who agreed to pay and discharge certain so-called underlying liens thereon, for the payment of which the court, under whose decree the road was sold, reserved the power to retake and re-
132 sell the road. In consideration of the conveyance of the road and the agreement of Kneeland to make certain improvements thereon, the Toledo, St. Louis and Kansas City Railroad Company, agreed to issue and deliver to Kneeland its capital stock and 9000 first-mortgage bonds of the par value of $1000 each, reserving therefrom however 158 of said bonds, which, together with other securities were deposited with the Farmers' Loan and Trust Company of New York, to secure the payment of said underlying liens, said bonds to be delivered by said trust company to Kneeland from time to time as said liens were paid and discharged.

Afterwards the Toledo, St. Louis and Kansas City railroad became insolvent, and the railroad and the property connected therewith were, by an order of this court, in this suit, placed in the hands of a receiver, and Kneeland having failed to pay and discharge said underlying liens, the receiver, for the protection of the property, acting under the direction of this court, paid and discharged said liens, out of the moneys and property of the railroad company in his hands, the amount so paid being over $500,000.

Afterwards on the 27″ day of March, 1900, said railroad and property were sold and, on the 17″ day of April, 1900, it appearing that the purchasers had made the cash payment required by the court and had deposited with the complainant first-mortgage bonds of the Toledo, St. Louis and Kansas City Railroad Company to the amount, at par, of $8,814,000, the sale was confirmed and a deed was ordered to be made conveying said railroad and property to the purchasers or to their assigns, and the distribution of the proceeds of the sale was reserved for future order.

Afterwards, on the — day of —— 18—, it appearing to the court that the purchasers had assigned their rights to the Toledo, St. Louis & Western Railroad Company, and that, in compliance, with the order of court, deeds had been made conveying said railroad and property to that company, as the assignee of the purchasers, the receiver was ordered to deliver possession thereof to said Toledo, St. Louis & Western Railroad Company, on the first day of August, 1900, and said company was made a party to this suit, as the successor in right and obligation, to Morton S. Paton and Richard B. Hartshorne, purchasers and James N. Wallace as their assignee, and, as such party, to be bound by all the proceedings taken herein since

the 17″ day of April, 1900, including the order of confirma-
133 tion of sale, and, in compliance with the order of the court, said railroad and the property in the possession of the receiver were delivered to the Toledo, St. Louis & Western Railroad Company, at the time fixed, and the receiver was afterwards discharged.

On the 27″ day of May, 1900, Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed his petition in this suit, setting up the facts hereinbefore recited, and claiming that he "is entitled, out of said first-mortgage bonds and said preferred stock and said common stock, in the hands of said Farmers' Loan & Trust Company, to be reimbursed all said amounts, with interest thereon, from the respective dates of payment thereof, which by him and by his predecessors in the receivership in this cause, of the said Toledo, St. Louis and Kansas City Railroad Company, have been paid in respect of said prior claims, whether for principal or interest," and praying "that said securities, towards satisfaction thereof, be delivered to the petitioner, to be by him delivered, as part of the mortgaged premises to the purchasers of the mortgaged premises at said sale thereof, made under said decrees of foreclosure of said first mortgage of said Toledo, St. Louis and Kansas City Railroad Company, or that said securities be sold and the proceeds thereof paid to your petitioner, for payment by him to said purchasers of the mortgaged premises, or be paid to said purchasers, and for such other and further relief as may be just."

On the 28″ day of July, 1900, Jules S. Bache, filed a plea to the jurisdiction of the court of his person and of the subject-matter of the petition of Samuel Hunt, receiver, in which he alleges, in substance, that he is the owner of certain judgments against Kneeland and the Toledo, St. Louis and Kansas City Railroad Company, and that, on the 17″ day of May, 1900, he commenced a proceeding, in aid of execution, in the supreme court of the State of New York, in the county of New York, against Kneeland and the Toledo, St. Louis and Kansas City Railroad and the Farmers' Loan & Trust Company, for the purpose of appropriating to the payment of these judgments, the mortgage bonds and other securities deposited with and held, as hereinbefore stated by the Farmers' Loan & Trust Company, to secure the payment of the so-called underlying liens, and that, in said proceeding, the Farmers' Loan &
134 Trust Company was appointed a receiver to hold said mortgage bonds and other securities subject to the order of said court.

Bache, as a junior encumbrancer of the railroad and property of the Toledo, St. Louis and Kansas City Railroad Company, was made one of the original defendants in this suit, and entered his appearance herein, on the 24″ day of January, 1894, and afterwards set up his claim, by answer, in the foreclosure suit, and also proved it before the master, in the creditors' suit, which is the same claim, upon which his proceeding, in the State court is founded. Kneeland is also a party to the cause. And, as persons having an interest in the

bonds, in question, they are represented by the Continental Trust Company, as trustee of the mortgage in suit.

First. Has the court jurisdiction of the subject-matter of this proceeding?

When the receiver used the moneys of the receivership to discharge the underlying liens, an equitable right accrued to him and to those whom he represented, to be reimbursed out of the bonds deposited with the Farmers' Loan & Trust Company, and that right became a part of the mortgaged property and passed by the sale to the purchaser, and is now vested in the Toledo, St. Louis & Western Railroad Company. This right or equity is covered by the fourth paragraph of the decree of foreclosure which describes the property found by the court to be subject to the lien of the mortgage. The proceeds of the sale of the mortgaged property have not been distributed but are still under the control of the court. The distribution thereof was expressly "reserved for future order" by the decree confirming the sale, and no order of distribution has since been made and this court has exclusive jurisdiction to determine when, how, and to whom the distribution shall be made, and, in ordering distribution may, if all the parties, in interest, are before the court, enforce the receiver's right of reimbursement by setting apart for that purpose, the distributive share of the proceeds of the sale, to which the bonds, in question, may be entitled. This will restore, in part, the moneys of the receivership used to discharge the underlying liens, and will effect a delivery to the Toledo, St. Louis & Western Railroad Company of a part of the property which passed to it by the sale, and will not involve a conflict of jurisdiction between this court and the State court. The trust, with which the
135 bonds in the possession of the Farmers' Loan & Trust Company is charged, appears from the petition filed by Bache in the State court, and while that court may sell the bonds and apply the proceeds to the payment of Bache's claim, yet the purchaser will take the bonds subject to the trust, under which the receiver's equity is asserted.

Second. Has the court, for the purposes of this proceeding, jurisdiction of the person of Jules S. Bache?

The Toledo, St. Louis and Kansas City Railroad Company, the Toledo, St. Louis & Western Railroad Company, the Continental Trust Company, as trustee of the mortgage securing the bonds, Sylvester H. Kneeland, Jules S. Bache, the Farmers' Loan & Trust Company and the receiver, are the only parties who have any interest, whatever, in the bonds. These parties are all before the court except the Farmers' Loan & Trust Company, and it is not a necessary party. The Toledo, St. Louis and Kansas City Railroad Company, the Continental Trust Company and Jules S. Bache were original parties to the suit. As a junior encumbrancer, Bache has never been dismissed from the suit, and as such he is before the court, for all the purposes of the distribution, of the proceeds of the sale of the mortgaged property. The bonds in question have little or no value other than such as accrues, from the right to participate, in the distribution, of the proceeds, of the sale, of the mortgaged

property, and the proceeding, in the State court was instituted by Bache, manifestly for the purpose of obtaining that right, and if it could be so obtained, undoubtedly, Bache, as party to this suit, could invoke any action of this court necessary to obtain the payment of their distributive share to him. The fund is here, the parties in interest are here and are entitled to have the fund distributed, according to their respective rights and priorities, whether their rights existed at the commencement of the suit or have been since acquired.

Pending the delivery of the mortgaged property to the purchaser, which the receiver was required to make, under the order of the court confirming the sale, it was competent for the receiver to seek the aid of the court to recover the moneys of the receivership used in discharging the underlying liens, with a view to their transfer to the purchaser or such other disposition thereof as the
136 court might see fit to make.

The plea will be overruled.

(Endorsement:) No. 1205. United States circuit court, northern district of Ohio, western division. Continental Trust Co. of the City of New York, &c. *vs.* Toledo, St. Louis and Kansas City Railroad Company, *et al.* Charles Hamlin, *et al.*, *vs.* Continental Trust Co. of the City of New York, *et al.* Opinion of Judge Thompson. Filed, Dec. 4, 1901, Irvin Belford, clerk.

137 December Term, A. D. 1901, to wit, December 14, 1901.

Present: The Honorable Francis J. Wing, U. S. district judge.

CONTINENTAL TRUST COMPANY OF NEW YORK ET AL.
vs.
TOLEDO, ST. LOUIS & KANSAS CITY RAILROAD CO. ET AL.

In the matter of the intervening petition of Samuel Hunt against Jules S. Bache and others.

This cause came on to be further heard upon the plea of Jules S. Bache to the jurisdiction of the court of his person and of the subject-matter on the petition of Samuel Hunt, receiver, and was submitted to the court. And the court, having heard the arguments of counsel and being now fully advised in the premises, finds that said plea is not well taken.

It is therefore, ordered, adjudged and decreed that the said plea of the said Jules S. Bache be, and the same hereby is, overruled; to which order the said Bache duly excepted.

138 (Entered) Saturday, December 21, 1901.

CONTINENTAL TRUST COMPANY OF THE City of New York, Survivor of John M. Butler,
against
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*
No. 1205. In Equity.

CHARLES HAMLIN ET AL.
against
CONTINENTAL TRUST COMPANY OF THE City of New York, Toledo, St. Louis and Kansas City Railroad Company.
Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, against Continental Trust Company, Richard B. Hartshorne, Morton S. Paton, Toledo, St. Louis & Kansas City Railroad Company, Sylvester H. Kneeland, The Farmers' Loan and Trust Company, *et al.*

It appearing to the court that certified copies of the order of court issued upon the petition of Samuel Hunt, receiver, verified and filed on the twenty-eighth day of May, 1900, were duly served on the Continental Trust Company, Richard B. Hartshorne, Morton S. Paton, the Toledo, St. Louis and Kansas City Railroad Company, Jules S. Bache and Sylvester H. Kneeland, on the thirty-first day of May, 1900, and on the Farmers' Loan and Trust Company, on the ninth day of June, 1900, in the manner provided by said order, and, it further appearing to the court that it was subsequently ordered that said petition be dismissed as to the said Richard S. Hartshorne and Morton S. Paton, and that James N. Wallace be made a party to this cause and be bound by all proceedings taken herein since the seventeenth day of April, 1900; and, it further appearing to the court that the said Toledo, St. Louis & Kansas City Railroad Company, Sylvester H. Kneeland and the Farmers' Loan and Trust Company have not appeared, answered or pleaded to said petition, and more than one year having elapsed since the service of said orders and the said James N. Wallace being in default for answer or plea herein, it is now ordered that the said petition be taken as confessed as against all the persons aforesaid with the exception of the Continental Trust Company Jules S. Bache, Richard B. Hartshorne and Morton S. Paton.

139 In the Circuit Court of the United States, Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, Survivor of John M. Butler, Complainant,
vs.
TOLEDO, ST. LOUIS AND KANSAS CITY RAILROAD COMPANY ET AL., Defendants.

CHARLES HAMLIN ET AL., Cross-complainant-,
vs.
CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, Cross-defendants.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, 1900.

GENTLEMEN: Please take notice that the undersigned will make an application before Hon. Francis J. Wing, United States district judge at his chambers in the city of Cleveland, Ohio, on the 2nd day of January, 1902, at 10 o'clock a. m., for an order granting leave to Jules S. Bache to answer the petition of Samuel Hunt, receiver, on or before the 6th day of January, 1902.

Dated December 31, 1901.

Yours, &c., SPIEGELBERG & WISE,
Solicitors for Jules S. Bache, Appearing Specially for the Purpose of the Plea to the Petition.

To Messrs. Butler, Notman, Joline & Mynderse, solicitors for receiver.

140 (Endorsement:) 1205. U. S. district court northern dist. of Ohio, western div. Continental Trust Company, complainant, against Toledo, St. Louis & Kansas City Railroad Company, *et al.* defendants. In the matter of the petition of Samuel Hunt. Notice of application. Spiegelberg & Wise, solicitors for Jules S. Bache (Edison building) 44 Broad street New York. Jan. 4, 1902, Leave granted. Wing J. Due service of a copy of within notice is admitted this 31st day of December, 1901. Butler, Notman, Joline & Mynderse, solicitors for rec'v'r. Filed. Jan. 6, 1902. Irvin Belford, clerk.

141 (Entered) Monday, April 7, 1902.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler,
against
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.* } No. 1205. In Equity.

CHARLES HAMLIN ET AL.
against
CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company. } Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, against Continental Trust Company, Richard B. Hartshorne, Morton S. Patton, Toledo, St. Louis & Kansas City Railroad Company, Sylvester H. Kneeland, The Farmers' Loan and Trust Company, *et al.*, respondents.

It appearing to the court that the plea of Jules S. Bache to the jurisdiction of the court of his person and of the subject-matter of the petition of Samuel Hunt, receiver, was by the court on the 14th day of December, 1901, overruled and that said Jules S. Bache has not answered, or otherwise pleaded, to said petition and more than three months having elapsed since the overruling of said plea, and the said Jules S. Bache being in default for answer or further plea herein, it is now ordered that the said petition be taken as confessed against him, the said Jules S. Bache.

142 In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, Survivor of John M. Butler, Complainant,
against
TOLEDO, ST. LOUIS AND KANSAS CITY RAILROAD COMPANY ET AL., Respondents.

CHARLES HAMLIN ET AL., Cross-complainants,
against
CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, Cross-respondents.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, 1900.

You will please to take notice that the plea of Jules S. Bache to the petition of said Samuel Hunt, receiver, filed herein, has been

set for hearing before the Honorable A. C. Thompson, judge of the United States district court for the southern district of Ohio, for November 24, 1900, at nine o'clock a. m., at the United States court-rooms, in the city of Cincinnati, Ohio.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
Solicitors for Purchasers.

To Messrs. Spiegelberg & Wise, solicitors for Jules S. Bache, 44 Broad St., New York city.

(Endorsement:) #1205. U. S. circuit court, no. dist. of Ohio, W. div. Continental Trust Co., of the City of N. Y., survivor, &c., against Toledo, St. Louis & Kansas City R. R. Co., *et al.* (and another case) In matter of petition of Sam'l Hunt, as receiver &c. Notice of hearing of plea. Butler, Notman, Joline & Mynderse, sol'rs for purchasers, 54 Wall street, New York city. Received, Nov. 20, 1900, Spiegelberg & Wise. Filed, Sep. 12, 1902, Irvin Belford, clerk.

143 December Term, A. D. 1902, to wit, December 4, 1902.

Present: The Honorable Francis J. Wing, U. S. district judge.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler,
vs.
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.* } No. 1205. In Equity.

CHARLES HAMLIN ET AL.
vs.
CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company. } Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, *vs.* Continental Trust Company, Richard B. Hartshorne, Morton S. Paton, Toledo, St. Louis and Kansas City Railroad Company, Sylvester H. Kneeland, The Farmers' Loan and Trust Company, *et al.*

This cause came on to be heard at this term upon the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, the answer of the respondent, The Continental Trust Company of the City of New York, and the proofs in the case.

And it appearing that the said petition of Samuel Hunt, receiver, was filed in this court on the 28th day of May, 1900, and that on the 9th day of June, an order was made and duly served upon the respondents, The Continental Trust Company, Richard B. Hartshorne, Morton S. Paton, Toledo, St. Louis and Kansas City Railroad Company, Jules S. Bache, Sylvester H. Kneeland, and The Farmers' Loan & Trust Company; requiring them and each of them to de-

mur or plead to or answer said petition within 20 days from the date of said order.

And it further appearing that it was subsequently ordered herein that said petition be dismissed as to said Richard B. Hartshorne and Morton S. Paton, and that James N. Wallace be made a party to this cause and be bound by all proceedings taken herein since the 17th day of April, 1900;

144 And it further appearing that, by an order made and entered herein on the 28th day of July, 1900, The Toledo, St. Louis & Western Railroad Company was substituted as petitioner herein in place of the said Samuel Hunt, receiver as aforesaid, as purchaser of the line of railroad, rights, privileges and franchises of the Toledo, St. Louis and Kansas City Railroad Company at the foreclosure sale thereof, and as successor in right to the said Samuel Hunt as such receiver and the Toledo, St. Louis and Kansas City Railroad Company;

And it further appearing that no appearance has been entered and no demurrer, plea or answer filed by the respondents James N. Wallace, The Toledo, St. Louis and Kansas City Railroad Company, Sylvester H. Kneeland and The Farmers' Loan & Trust Company, and that an order taking the said petition *pro confesso* against the said respondents was duly made and entered herein on the 21st day of December, 1901, and that no proceedings have been had or taken by the said respondents since said order was entered, and that more than thirty days have elapsed since the entering of said order;

And it further appearing that the said respondent Jules S. Bache, having filed his plea to the jurisdiction herein, and appearing for said purpose only, which said plea was thereafter overruled, did not answer or otherwise plead to the said petition, and that on the 7th day of April, 1902, an order was duly entered herein, taking the said petition *pro confesso* against the said respondent and that no proceedings have been had or taken by the said respondent since said order was entered, and that more than thirty days have elapsed since the entering of said order taking said bill *pro confesso* against said respondent Jules S. Bache;

And it further appearing that on the 27th day of July, 1900, the respondent The Continental Trust Company of the City of New York filed its answer herein, confessing the allegations of the said petition and submitting its rights in the premises to the court and praying such decree as to the court should seem just;

And it appearing that the respondent The Farmers' Loan & Trust Company, in pursuance of a certain agreement and declara-
145 tion of trust in said petition set forth holds the following securities, which said securities were delivered to it under the said agreement and declaration of trust, for the purpose of securing the payment of certain outstanding claims against the assets and property of the Toledo, St. Louis & Kansas City Railroad Company, including the claims of the American Surety Company, the Northern National Bank of Toledo, Ohio, and others whose claims were represented by said bank and the State Trust Company of New York, to wit:

First-mortgage bond of the Toledo, St. Louis and Kansas City Railroad Company of the par value of one hundred and fifty-eight thousand dollars ($158,000), bearing the coupon maturing June 1, 1893, and all subsequent coupons.

Preferred stock of the said Toledo, St. Louis and Kansas City Railroad Company to the par value of five hundred thousand dollars ($500,000).

Common stock of the said Toledo, St. Louis and Kansas City Railroad Company to the par value of one million, one hundred and sixty-nine thousand dollars ($1,169,000).

And it further appearing that said claims remained unpaid in violation of the aforesaid agreements, and that Samuel Hunt, as receiver as aforesaid, and his predecessors in office, thereafter, and during the pendency of their respective receiverships, paid and expended the sum of $555,759.42 in full satisfaction of the claims of the American Surety Company of New York, the Northern National Bank of Toledo, Ohio, and the State Trust Company, of New York, and interest thereon, as more particularly in said petition set forth; said claims being paid in part out of moneys arising from the operation of the said Toledo, St. Louis and Kansas City railroad during the period of the said receiverships; and in part by the issue of four hundred and thirty thousand dollars ($430,000) receiver's certificates as in said petition set forth.

And it further appearing that the said receiver, and his predecessors in office, under orders of this court herein duly made and entered further paid interest upon the said claim of the said Northern National Bank, of Toledo, Ohio, and others whose claims were represented by said bank, and upon the said claim of the said The State Trust Company of New York, quarterly, from July 1st, 1894 to June 1, 1898, at the rate of six per cent. (6%) per annum.

146 And it further appearing that the said receiver's certificates so issued as aforesaid, have been fully paid, partly out of the monies in the said receiver's hands arising out of the operation of the said railroad, and partly out of the proceeds of the sale of the property of the said Toledo, St. Louis and Kansas City Railroad Company, heretofore made herein;

And it further appearing that the amount of the aforesaid claims, paid by the said receivers, is largely in excess of the actual value of the said securities, the value of the said first-mortgage bonds, with accrued interest, being not in excess of the sum of $1,350 each and the said preferred and common stock having no market or actual value;

Now, therefore, upon consideration of the said petition, the answer thereto of the respondent, The Continental Trust Company of the City of New York, and the said proofs, and by reason of the default of the said respondents James N. Wallace, Toledo, St. Louis and Kansas City Railroad Company, Sylvester H. Kneeland, The Farmers' Loan & Trust Company and Jules S. Bache,

It is, by the court, ordered, adjudged, and decreed as follows:

That the prayer of the said petition be granted, and that the said Toledo, St. Louis and Western Railroad Company, as successor to

the rights of the said Samuel Hunt, as such receiver, and his predecessors in office, is entitled out of the first-mortgage bonds and the said preferred stock and the said common stock in the hands of the respondent The Farmers' Loan & Trust Company, to be reimbursed, all said amounts, with interest thereon from the respective dates of payment thereof, which, by the said Samuel Hunt, as such receiver, and by his predecessors in the receivership in this cause of the said Toledo, St. Louis and Kansas City Railroad Company, have been paid in respect of the said prior claims, whether for principal or interest; that said securities be delivered to the said Toledo, St. Louis and Western Railroad Company, and that in default of such delivery within thirty days from the entry of this order, the said securities shall stand cancelled and as of no further force or effect as obligations of the said Toledo, St. Louis and Kansas City Railroad Company.

147 In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant,
against
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents.
No. 1205. In Equity.

CHARLES HAMLIN ET AL., Cross-complainants,
against
CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, Cross-respondents.
Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, A. D. 1900.

To the Honorable Francis J. Wing, United States district judge, and one of the judges of the above-named court, presiding therein:

Your petitioner, Jules S. Bache, considering himself aggrieved by the decree of this court this day, viz: the 4th day of December, 1902, entered on the above-mentioned petition, ordering, adjudging and decreeing

"That the prayer of the said petition be granted, and that the "said Toledo, St. Louis and Western Railroad Company, as successor "to the rights of the said Samuel Hunt, as such receiver, and his "predecessors in office, is entitled out of the said first-mortgage "bonds and the said preferred stock and the said common stock in

"the hands of the respondent The Farmers' Loan and Trust Com-
"pany, be reimbursed all said amounts with interest thereon from
"the respective dates of payment thereof, which by the said Samuel
"Hunt as such receiver, and by his predecessors in the receivership
"in this cause of the said Toledo, St. Louis and Kansas City Rail-
"road Company have been paid in respect of the said prior claims,
"whether for principal or interest; that said securities be delivered
"to the said Toledo, St. Louis and Western Railroad Company, and
"that in default of such delivery within thirty days from the
148 "entry of this decree, the said securities shall stand cancelled
"and as of no further force or effect as obligations of the said
"Toledo, St. Louis and Kansas City Railroad Company,"

and by the following interlocutory orders entered upon said petition, viz: Order filed May 31st, 1900, ordering Continental Trust Company of the City of New York and others to answer, demur or plead to said petition; order filed June 9th, 1900, ordering the Farmers' Loan & Trust Company to answer, demur or plead to said petition; order filed July 28th, 1900, substituting Toledo, St. Louis and Western Railroad Company as petitioner in said petition in the place of Samuel Hunt, as receiver; order filed December 14th, 1901, overruling the plea of Jules S. Bache to said petition; order filed April 7th, 1902, ordering that said petition be taken as confessed against Jules S. Bache, does hereby appeal from such decree and orders, and each of them, to the Supreme Court of the United States, for the reasons specified in the assignment of errors hereto annexed, and he prays that this his appeal be allowed on the ground that the jurisdiction of the court is in issue, and that this court certify the question of jurisdiction to the said Supreme Court for its decision, and that a transcript of the record and proceedings and papers upon which said decree and orders were made, so far as they appertain to the said questions of jurisdiction, duly authenticated may be sent to the Supreme Court of the United States.

And petitioner further prays that the court fix the penalty of a cost bond to be given by this petitioner within thirty days from the allowance of the appeal prayed for herein, and petitioner herewith submits and files his assignment of errors as required by the rules and practice in such cases.

SPIEGELBERG & WISE,
Solicitors for Petitioner.

(Endorsement:) United States circuit court, northern district of Ohio, western division. # 1205. Continental Trust Company against Toledo, St. Louis & Kansas City Railroad Co., *et al.* In the matter of the petition of Samuel Hunt, as receiver, &c. Petition for allowance of appeal and certificate. Spiegelberg & Wise, solicitors for J. S. Bache. Filed, Dec. 4, 1902, Irvin Belford, clerk.

149 In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant,
against
TOLEDO, ST. LOUIS & KANSAS CITY RAILroad Company *et al.*, Respondents.
} No. 1205. In Equity.

CHARLES HAMLIN ET AL., Cross-complainants,
against
CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, Cross-respondents.
} Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, 1900.

Assignment of Errors of Appellant Jules S. Bache.

And now, on this 4th day of December, 1902, being one of the days of the December term, 1902, of this court, comes Jules S. Bache, by Spiegelberg & Wise, his solicitors, and says that the decree of the circuit court in the above-entitled proceeding entered on this day upon the petition above referred to adjudging and decreeing

"that the prayer of said petition be granted, and that the said "Toledo, St. Louis and Western Railroad Company, as successor to "the rights of the said Samuel Hunt, as such receiver, and his prede- "cessors in office, is entitled out of the said first-mortgage bonds "and the said preferred stock and the said common stock in the "hands of the respondent, The Farmers' Loan and Trust Company, "to be reimbursed all said amounts with interest thereon from the "dates of payment thereof which by the said Samuel Hunt as such "receiver, and by his predecessors in the receivership in this cause "of the said Toledo, St. Louis & Kansas City Railroad Company "have been paid in respect of the said prior claims, whether for "principal or interest; that said securities be delivered to the said "Toledo, St. Louis and Western Railroad Company, and that in de-
"fault of such delivery within thirty days from the entry of
150 "this order, the said securities shall stand cancelled and as of
"no further force or effect as obligations of the said Toledo, "St. Louis and Kansas City Railroad Company,"

and each of the several interlocutory orders entered upon said petition, to wit: Order filed May 31st, 1900, ordering Continental Trust Company of the City of New York and others to answer, demur or plead to said petition; order filed June 9th, 1900, ordering the Farmers' Loan and Trust Company to answer, demur or plead to

said petition; order filed July 28th, 1900, substituting Toledo, St. Louis & Western Railroad Company as petitioner in said petition in the place of Samuel Hunt as receiver; order filed December 14th, 1901, overruling the plea of Jules S. Bache to said petition; order filed April 7th, 1902, ordering that said petition be taken as confessed against Jules S. Bache, is each erroneous, without the power or jurisdiction of said circuit court, and against his just rights, for the following reasons:

1. The said circuit court erred in overruling the plea of appellant, Jules S. Bache, to the jurisdiction in the proceedings upon said petition filed in the office of the clerk of said court on the 28th day of July, A. D. 1900.

2. The said circuit court had no jurisdiction of the subject-matter of said petition, for that the bonds coupons and stock therein referred to were never within or subject to its jurisdiction.

3. The circuit court had no jurisdiction of the subject-matter of said petition, for that said bonds, coupons and stock were in the possession and control of the supreme court of the State of New York, by its receiver duly appointed and qualified in the proceedings referred to in the plea of appellant Bache, at the time of and prior to the filing of said petition in the office of the clerk of the said circuit court or the taking of any proceedings thereon by said circuit court.

4. The circuit court erred in adjudging that the consolidated suit referred to in said petition was still pending, and that by reason thereof it had ancillary or dependent jurisdiction of the subject-matter of said petition, and in not holding that the entry of a final decree in such consolidated suit divested the court of ancillary or dependent jurisdiction for the purposes of said petition.

151 5. The circuit court erred in adjudging that, as the Continental Trust Company of New York, as trustee of the mortgage securing the nine thousand (9,000) bonds of which the one hundred and fifty-eight (158) bonds and coupons in question were a part, represented and was trustee of the holders of all such bonds, in consequence thereof represented appellant Bache in respect of his lien, rights and interest in said one hundred and fifty-eight (158) bonds, coupons and stock derived from the proceedings instituted by him in the supreme court of the State of New York, referred to in his said plea, that therefore the court had jurisdiction of the subject-matter of said petition and power to adjudicate as between the conflicting claims of appellant Bache on the one hand and receiver Hunt or the said Toledo, St. Louis and Western Railroad Company on the other in respect of said one hundred and fifty-eight (158) bonds, coupons and stock.

6. The circuit court was without jurisdiction to grant the relief prayed in said petition, or any relief, because it appears therefrom, and from said plea of appellant Bache, that none of said one hundred and fifty-eight (158) bonds or coupons, or five thousand shares (5,000) of preferred stock and eleven thousand, one hundred and sixty-nine (11,169) shares of common stock, were ever in the possession of said receiver Hunt, or any of his predecessor receivers, and that any

right of either of such receivers to the possession or ownership thereof if any there ever was, had passed to the purchasers at the sale under the foreclosure decree prior to the filing of said petition or the taking by the court of any proceedings thereon.

7. The circuit court erred in adjudging that it had jurisdiction, under said petition, to determine as between the conflicting claims of appellant Jules S. Bache, on the one hand, and said Samuel Hunt, receiver, or the Toledo, St. Louis and Western Railroad Company on the other, to the one hundred and fifty-eight (158) bonds and coupons, five thousand (5,000) shares of preferred stock, and eleven thousand, six hundred and ninety (11,690) shares of common stock of the Toledo, St. Louis and Kansas City Railroad Company referred to in said petition, and in decreeing the delivery of the same to said Toledo, St. Louis and Western Railroad Company, or in default thereof that the same stand cancelled and as of no further
152 force or effect as obligations of the said Toledo, St. Louis and Kansas City Railroad Company, and that the rights, interests and liens of appellant, Jules S. Bache, thereto, acquired through the proceedings in the supreme court of the State of New York, referred to in said plea, are junior, subject and subordinate to those thus decreed to said Toledo, St. Louis and Western Railroad Company or that he acquired no right, lien or interest in such bonds, coupons and stock by said proceedings.

8. The circuit court had no jurisdiction of the person of appellant, Jules S. Bache, for that he at no time was within or subject to the jurisdiction of said circuit court; that no process had been issued upon said petition or served upon him within the State of Ohio, or elsewhere; nor had any notice of the filing of said petition, or of any hearing thereon, or of any proceeding taken or to be taken thereunder or thereon, or requiring him to answer demur or plead to said petition, been served upon him in the State of Ohio, or elsewhere; nor had any order requiring him to answer demur or plead to said petition, or to appear thereto, in anywise been served upon him in the State of Ohio, or elsewhere; nor had he at any time, or in anywise, appeared to said petition, either in person or by agent, attorney, solicitor, of counsel, or in anywise, or at any time, consented to the exercise by said court of jurisdiction of his person, or at any time waived or relinquished the objections made by him to the jurisdiction of said court, by his plea to such jurisdiction, or any of them.

9. The said court had no jurisdiction of the person of appellant, Jules S. Bache for that the alleged service by mail by the clerk of the alleged order dated May 29th, 1900 and filed May 31st, 1900, requiring him to demur or plead to said petition or answer the same within twenty days from the date of the entry of such order, was not authorized by any order of said court or any judge thereof and for that the judge making said order had no lawful authority, power or jurisdiction to do so and the same is inoperative, null and void.

10. The circuit court erred in adjudging that appellant Bache was a party to the consolidated suit referred to in said petition, and that

by reason thereof jurisdiction of his person for the purpose
153 of said petition was obtainable by the making of an alleged service by mail of the order of May 29th, 1900, and in not holding that if he was such party, that the entry of the final decree in such consolidated suit divested the court of ancillary or dependent jurisdiction of his person for the purposes of said petition.

11. The circuit court erred in adjudging that, as the Continental Trust Company of New York, as trustee of the mortgage securing the nine thousand (9,000) bonds of which the one hundred and fifty-eight (158) bonds in question were a part, represented and was trustee of the holders of all such bonds, in consequence thereof represented appellant Bache in respect of his lien, rights and interest in said one hundred and fifty-eight (158) bonds, coupons and stock derived from the proceedings instituted by him in the supreme court of New York referred to in his said plea, that therefore the court had jurisdiction of his person by representation of such Continental Trust Company for the purposes of said petition.

12. The circuit court had no jurisdiction of the person of Sylvester H. Kneeland, for that he at no time was within or subject to the jurisdiction of said circuit court: that no process had been issued upon said petition or served upon him within the State of Ohio, or elsewhere; nor had any notice of the filing of said petition, or of any hearing thereon, or of any proceeding taken, or to be taken, thereunder, or thereon, or requiring him to answer, demur, or plead to said petition, been served upon him in the State of Ohio or elsewhere; nor had any order requiring him to answer demur or plead to said petition, or to appear thereto, in anywise been served upon him in the State of Ohio, or elsewhere; nor had he at any time, or in anywise, appeared to said petition, either in person or by agent, attorney, solicitor or counsel, or in anywise or at any time consented to the exercise by said court of jurisdiction of his person, or at any time waived or relinquished any of said objections to the jurisdiction of the court.

13. The circuit court erred in adjudging that Sylvester H. Kneeland was a party to the consolidated suit referred to in said petition, and that by reason thereof jurisdiction of his person for the purposes of said petition was obtainable by the making
154 and alleged service by mail of the order of May 29th, 1900, and in not holding that if he was such party, that the entry of the final decree in such consolidated suit prevented the exercise of ancillary or dependent jurisdiction of his person for the purposes of said petition.

14. The circuit court had no jurisdiction of the person of the Farmers' Loan and Trust Company, for that it at no time was within or subject to the jurisdiction of said court; that no process had been issued upon said petition, or served upon it within the State of Ohio, or elsewhere; nor had any notice of the filing of said petition, or of any hearing thereon, or of any proceeding taken, or to be taken, thereunder or thereon, or requiring it to answer, demur or plead to said petition, been served upon it in the State of Ohio, or elsewhere; nor had any order requiring it to answer, demur or

plead to said petition, or to appear thereto in anywise been served upon it in the State of Ohio, or elsewhere; nor had it at any time, or in anywise, appeared to said petition, either in person or by agent, attorney, solicitor or counsel, or in anywise or at any time consented to the exercise by said court of jurisdiction of its person, or at any time waived or relinquished any of the different objections to the jurisdiction of said court of its person.

15. The circuit court erred in adjudging that it had jurisdiction of the subject-matter of said petition or of the person of appellant Jules S. Bache or of Sylvester H. Kneeland or the Farmers' Loan & Trust Company by virtue of the alleged power of distribution of the proceeds of sale alleged to have been reserved in the order confirming the sale under the decree of foreclosure, for that the court had no authority or power to make such reservation after such final decree of foreclosure and its affirmance in the circuit court of appeals.

16. The circuit court, in determining that it had jurisdiction to grant the relief prayed in said petition, and to decide as between the conflicting claims of appellant Bache on the one hand and said receiver Hunt or the Toledo, St. Louis and Western Railroad Company on the other, to the said one hundred and fifty-eight (158) bonds, coupons and stock in question, erroneously took into consideration matters outside of the record and not embraced in said petition or in said plea of appellant Bache, to wit:

155 "Bache, as a junior encumbrancer of the railroad and property of the Toledo, St. Louis and Kansas City Railroad Company, was made one of the original defendants in this suit, and entered his appearance herein on the 24th day of January, 1894, and afterwards set up his claim by answer in the foreclosure suit, and also proved it before the master in the creditors' suit, which is the same claim upon which his proceeding in the State court is founded.

* * * * * * *

"The Toledo, St. Louis and Kansas City Railroad Company, the Toledo, St. Louis and Western Railroad Company, the Continental Trust Company, as trustee of the mortgage securing the bonds, Sylvester H. Kneeland, Jules S. Bache, the Farmers' Loan and Trust Company, and the receiver, are the only parties who have any interest whatever in the bonds. These parties are all before the court except the Farmers' Loan and Trust Company, and is not a necessary party. The Toledo, St. Louis and Kansas City Railroad Company, the Continental Trust Company and Jules S. Bache were original parties to the suit.

As a junior encumbrancer, Bache has never been dismissed from the suit, and as such he is before the court for all the purposes of the distribution of the proceeds of the sale of the mortgaged property."

17. The circuit court, in determining that it had jurisdiction to grant the relief prayed in said petition, and to determine as between the conflicting claims of appellant Bache on the one hand and said receiver Hunt or the Toledo, St. Louis and Western Railroad Com-

pany on the other, to the said one hundred and fifty-eight (158) bonds coupons and stock in question, erroneously took into consideration matters outside of the record and not embraced in said petition, or in said plea of appellant Bache, to wit:

"When the receiver used the moneys of the receivership to discharge the underlying liens, an equitable right accrued to him and to those whom he represented to be reimbursed out of the bonds deposited with the Farmers' Loan and Trust Company, and that right became a part of the mortgaged property and passed by the sale to the purchaser, and is now vested in the Toledo, St. Louis and
156 Western Railroad Company. This right or equity is covered by the fourth paragraph on the decree of foreclosure which describes the property found by the court to be subject to the lien of the mortgage. The proceeds of the sale of the mortgaged property have not been distributed but are still under the control of the court. The distribution thereof was expressly 'reserved for future order' by the decree confirming the sale, and no order of distribution has since been made, and this court has exclusive jurisdiction to determine when, how and to whom the distribution shall be made, and, in ordering distribution, may if all the parties in interest are before the court, enforce the receiver's rights of reimbursement by setting apart for that purpose the distributive share of the proceeds of the sale to which the bonds in question may be entitled."

18. The circuit court erred in adjudging that it had jurisdiction to deal with the one hundred and fifty-eight (158) bonds, coupons and stock in question and to determine all conflicting claims to the same in the absence of the Farmers' Loan & Trust Company as a party to the controversy, and that said Farmers' Loan & Trust Company was not a necessary party and had no interest in such bonds, coupons and stock.

19. The circuit court erred in adjudging that its ancillary or dependent jurisdiction in the consolidated suit, if any it had, to determine the conflicting claims of appellant Bache on the one hand and said receiver Hunt or the Toledo, St. Louis & Western Railroad Company on the other, to said bonds and stock in question could be exercised under said petition or otherwise than by an original suit.

20. The circuit court erred in adjudging that it had jurisdiction to deal with said bonds, coupons and stock and to determine all conflicting claims to the same and in not holding that the supreme court of the State of New York had exclusive jurisdiction to do so.

21. The circuit court erred in entertaining jurisdiction of said petition, and entering the order on the thirteenth day of July, 1900, admitting James N. Wallace as a party respondent to said petition and dismissing Morton S. Paton and Richard B. Hartshorne.
157 22. The circuit court erred in entertaining jurisdiction of said petition, and entering the order of July 28th, 1900, substituting The Toledo, St. Louis and Western Railroad Company as petitioner in said petition in place of the said Samuel Hunt, as receiver.

JULES S. BACHE,
By SPIEGELBERG & WISE,
His Solicitors.

#1205. United States circuit court, northern district of Ohio, western division. Continental Trust Co. against Toledo, St. Louis & Kansas City Railroad Co. *et al.* In the matter of the petition of Samuel Hunt, as receiver, &c. Assignment of errors. Spiegelberg & Wise, solicitors for J. S. Bache. Filed, Dec. 4, 1902, Irvin Belford, clerk.

December Term, A. D. 1902, to wit, December 4, 1902.

Present: The Honorable Francis J. Wing, U. S. district judge.

Order Allowing Appeal.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, *against* TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.* } No. 1205. In Equity.

CHARLES HAMLIN ET AL. *against* CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland. } Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, 1900.

And now, on this 4th day of December, 1902, being one of the days of the December term, 1902, of this court, and the same term at which the final decree was entered in the above-entitled cause upon the petition of Samuel Hunt, as receiver, filed in the
158 office of the clerk of this court on May 28th, 1900, comes Jules S. Bache, by Spiegelberg & Wise, his solicitors, and presents his petition praying an appeal from said decree and the intermediate orders entered upon said petition, to the Supreme Court of the United States, together with his assignment of errors heretofore filed herein, upon the ground that the jurisdiction of this court is in issue and that a certificate be made accordingly, and it appearing to the court that its jurisdiction is in issue, that due notice of this application with a request to join in the same and in such appeal has been given to Continental Trust Company of the City of New York, Richard B. Hartshorne, Morton S. Paton, Toledo, St. Louis and Kansas City Railroad Company, Sylvester H. Kneeland, The Farmers' Loan & Trust Company and James N. Wallace, and that they have failed to do so.

It is ordered that the appeal prayed for as aforesaid be and is hereby allowed to the said Jules S. Bache on the ground that the jurisdiction of this court is in issue and that a cost bond conditioned as required by law in the penalty of five hundred ($500) dollars,

with surety or sureties to the approval of this court or a judge thereof be filed within 20 days from the date hereof by the said Jules S. Bache and the clerk of this court is hereby directed upon the filing of said bond to transmit to the said Supreme Court a transcript of the record and proceedings and papers upon which said decree and orders were made, so far as they appertain to the said question of jurisdiction, duly authenticated.

159 In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE City of New York, Survivor of John M. Butler, Complainant, *against* TOLEDO, ST. LOUIS AND KANSAS CITY Railroad Company *et al.*, Respondents.	No. 1205. In Equity.
CHARLES HAMLIN ET AL., Cross-complainants, *against* CONTINENTAL TRUST COMPANY OF THE City of New York, Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, Cross-respondents.	Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis & Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, 1900.

To Continental Trust Company of the City of New York, Richard B. Hartshorne, Morton S. Paton, Toledo, St. Louis and Kansas City Railroad Company, Sylvester H. Kneeland, The Farmers' Loan and Trust Company, and James N. Wallace:

You, and each of you, are hereby notified that immediately upon the entering of a final decree on the above-mentioned petition, or as soon thereafter as counsel can be heard, we shall apply to the above-named circuit court, on behalf of Jules S. Bache, for the allowance of an appeal to the Supreme Court of the United States, from the said decree and all intermediate orders entered on said petition, and for a certificate that the jurisdiction of the court is in issue with respect to each and all of said orders and decrees, and you are severally requested to join in said appeal and the assignment of errors.

SPIEGELBERG & WISE,
Solicitors for Jules S. Bache.

E. D. POTTER, *Counsel.*

160 Copy of this paper served on M. L. Crowell, at Toledo, Ohio, on Saturday, Sep. 13, 1902, at 10.35 a. m., said M. L. Crowell being secretary of the Toledo, St. Louis and Kansas City Railroad Company.

J. W. LYONS.

(Endorsement:) United States circuit court, northern district of Ohio, western division. Continental Trust Co. against Toledo, St. Louis & Kansas City Railroad Company, *et al.* In the matter of the petition of Samuel Hunt, as receiver, &c. Notice of application for allowance of appeal and certificate. Spiegelberg & Wise, solicitors for J. S. Bache, 44 Broad street, New York. Filed. Dec. 4, 1902. Irvin Belford, clerk.

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant, *against* TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents.	No. 1205. In Equity.
CHARLES HAMLIN ET AL., Cross-complainants, *against* CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, Cross-respondents.	Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, 1900.

161 To Continental Trust Company of the City of New York, Richard B. Hartshorne, Morton S. Paton, Toledo, St. Louis and Kansas City Railroad Company, Sylvester H. Kneeland, The Farmers' Loan & Trust Company, and James N. Wallace:

You, and each of you, are hereby notified that immediately upon the entering of a final decree on the above-mentioned petition, or as soon thereafter as counsel can be heard, we shall apply to the above-named circuit court, on behalf of Jules S. Bache, for the allowance of an appeal to the Supreme Court of the United States from the said decree and all intermediate orders entered on said petition, and for a certificate that the jurisdiction of the court is in issue with respect to each and all of said orders and decrees, and you are severally requested to join in said appeal and the assignment of errors.

SPIEGELBERG & WISE,
Solicitors for Jules S. Bache.

(*Proof of Service.*)

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, Survivor of John M. Butler, Complainant,
against
TOLEDO, ST. LOUIS & KANSAS CITY RAILROAD COMPANY ET AL., Respondents.

CHARLES HAMLIN ET AL., Cross-complainants,
against
CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK ET AL., Cross-respondents.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis & Kansas City Railroad Company, filed in the office of the clerk of this court on the 28 day of May, 1900.

UNITED STATES OF AMERICA, *Southern District of New York*, } ss:

John Manheimer, being duly sworn, deposes and says that he is a clerk in the office of Spiegelberg & Wise, solicitors for Jules S. Bache, and that he is over 21 years of age.

162 That he served the annexed notice by delivering a true and correct copy thereof to the following-named persons and corporations on the following dates:

On the 13th day of September, 1902, on the Continental Trust Company of the City of New York, by delivering the same to Henry E. Daboll, the treasurer of said corporation, at the office of said corporation, No. 30 Broad street, in the city of New York.

On the 12th day of September, 1902, on James N. Wallace at No. 54 Wall street, New York city, by delivering a copy thereof to him personally.

On the 15th day of September, 1902, on the Farmers' Loan & Trust Company by delivering the same to A. V. Heely, the assistant secretary at the office of said corporation, at No. 22 William street, New York city.

That he knew the person thus served to be the individual mentioned, and that he knew that Henry E. Daboll is the treasurer of the said Continental Trust Company of the City of New York, and that A. V. Heely is the assistant secretary of the Farmers' Loan & Trust Company.

J. MANHEIMER.

Subscribed and sworn to before me this 18th day of Sept. 1902.

[SEAL.] ALEX. L. STROUSE,
Notary Public #307, *N. Y. County.*

(*Proof of Service.*)

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK, Survivor of John M. Butler, Complainant,
against
TOLEDO, ST. LOUIS & KANSAS CITY RAILROAD COMPANY ET AL., Respondents.

CHARLES HAMLIN ET AL., Cross-complainants,
against
CONTINENTAL TRUST COMPANY OF THE CITY OF NEW YORK ET AL., Cross-respondents.

163 In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, 1900.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

Alex. L. Strouse, being duly sworn, deposes and says that he is a clerk in the office of Spiegelberg & Wise, solicitors for Jules S. Bache, and that he is over 21 years of age.

That on the 17th day of September, 1902, he served the annexed notice on Sylvester H. Kneeland at his office at No. 32 Broadway, New York city, by delivering to and leaving with him a true and correct copy thereof.

That he knew the person thus served to be the person mentioned and described in said notice.

ALEX. L. STROUSE.

Subscribed and sworn to before me this 18th day of Sept. 1902.

[SEAL.]

J. MANHEIMER,
Notary Public, N. Y. Co.

(Endorsement:) United States circuit court, northern district of Ohio, western division. Continental Trust Co. against Toledo, St. Louis & Kansas City Railroad Co. *et al.* In the matter of the petition of Samuel Hunt, as receiver, &c. Notice of application for allowance of appeal and certificate. Spiegelberg & Wise, solicitors for J. S. Bache, 44 Broad street, New York. Received a copy of this paper on Sep. 17, 11.58 a. m., 1902. Butler, Notman, Joline & Mynderse, att'ys for Paton & Hartshorne, purchasers. Filed. Dec. 4, 1902. Irvin Belford, clerk.

164 Circuit Court of the United States, Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant,
against
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*, Respondents.
} No. 1205. In Equity.

CHARLES HAMLIN ET AL., Cross-complainants,
against
CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, Cross-respondents.
} Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, 1900.

Know all men by these presents: That we, Jules S. Bache, as principal, and The Fidelity and Deposit Company of Maryland, a corporation of the State of Maryland, duly authorized to transact business pursuant to the act of Congress approved August 13th, 1894, as surety, are held and firmly bound unto Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, and the Toledo, St. Louis and Western Railroad Company, in the full and just sum of five hundred dollars, to be paid to the said Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company and the Toledo, St. Louis and Western Railroad Company, their successors and assigns, for which payment, well and truly to be made, the said Jules S. Bache binds himself, his heirs, executors and administrators, and the said Fidelity and Deposit Company of Maryland binds itself, its successors and assigns, jointly and severally, firmly by these presents.

165 Sealed with our seals. Dated the sixth day of December, one thousand nine hundred and two.

Whereas, lately at a circuit court of the United States, for the northern district of Ohio, western division, in a suit pending in said court, between The Continental Trust Company of the City of New York, survivor of John M. Butler, complainant, against Toledo, St. Louis and Kansas City Railroad Company, *et al.*, respondents, and Charles Hamlin, *et al.* cross-complainants, against The Continental Trust Company of the City of New York, Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, cross-respondents, a final decree was entered in the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of said court, on May 28, 1900, and the said Jules S. Bache, having obtained an order allowing an appeal to the Supreme Court of the United States and filed

the same in the clerk's office of the said circuit court, to reverse the decree in the aforesaid suit, and a citation directed to the said above-named Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, and the Toledo, St. Louis and Western Railroad Company, is about to be issued citing and admonishing them to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington:

Now, the condition of the above obligation is such, that if the said Jules S. Bache, shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his said plea good, then this obligation to be void; otherwise, to remain in full force and virtue.

JULES S. BACHE. [SEAL.]
[CORPORATE SEAL.] FIDELITY AND DEPOSIT COMPANY OF MARYLAND.
HENRY B. PLATT, *Vice-President.*

Attest: JAMES R. KINGSLEY,
Attorney-in-fact.

STATE OF NEW YORK,
County of New York, } *ss:*

166 On this eighth day of December, 1902, before me personally appeared Jules S. Bache, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

[SEAL.]
ALEX. L. STROUSE,
Notary Public, New York County.

Approved:
FRANCIS J. WING, *Judge.*

(Endorsement:) Circuit court of the U. S. Northern district of Ohio, western division. Continental Trust Company of the City of New York, survivor of John M. Butler, complainant, against Toledo, St. Louis and Kansas City Railroad Company, *et al.*, respondents. Bond. Filed. Dec. 10, 1902. Irvin Belford, clerk. Fidelity and Deposit Company of Maryland. 35 Wall street, New York.

167 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Samuel Hunt, as receiver of the St. Louis, Toledo & Kansas City Railroad Company and Toledo, St. Louis & Western Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at the city of Washington in the District of Columbia within thirty days from the date of this writ, pursuant to an appeal filed in the office of the clerk of the circuit court of the United States for the northern district of Ohio, western division, wherein Jules S. Bache is appellant and you are appellees, to show cause, if any there be, why the decree and

the orders in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Hon. Melville W. Fuller, Chief Justice of the United States, the 10th day of December in the year one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-seventh.

FRANCIS J. WING,
United States District Judge, Presiding in the Circuit Court.

Service of above citation acknowledged this 10th day of December, 1902.

SAM'L HUNT, *Rec'r, and*
TOLEDO, ST. LOUIS & WESTERN RAILROAD CO.,
By CLARENCE BROWN, *Solicitor.*

Toledo, Ohio, Dec. 10, 1902.

168 In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler, Complainant, *against* TOLEDO, ST. LOUIS & KANSAS CITY RAILROAD COMPANY *et al.*, Respondents.	No. 1205. In Equity.
CHARLES HAMLIN ET AL., Cross-complainants, *against* CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, S. H. Kneeland, Cross-respondents.	Cross-bill.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, A. D. 1900.

To the clerk of the above-entitled court:

You will please prepare the transcript of the record in the matter of the petition of Samuel Hunt, as receiver, etc., filed May 28th, 1900, in the above-entitled cause, to be filed in the office of the clerk of the Supreme Court of the United States, under the appeal heretofore perfected to said court by Jules S. Bache and include in said transcript the following pleadings, proceedings and papers on file:

First. The petition of Receiver Hunt, filed May 28th, 1900, together with the exhibits thereto attached, marked A to K.

Second. Plea of Jules S. Bache to said petition filed July 28, 1900.

Third. Motion and order dismissing Hartshorne and Paton and making Wallace a party, filed July 13, 1900.

Fourth. Motion and order substituting Toledo, St. Louis & Western Railroad Company filed July 28, 1900.

Fifth. Notice of motion setting down plea for argument, filed ——.

169 Sixth. Order overruling plea of Jules S. Bache, filed December 14th, 1901.

Seventh. Opinion of the court on overruling said plea, filed December 4th, 1901.

Eighth. Order taking decree *pro confesso* against Jules S. Bache, filed April 7, 1902.

Ninth. Final decree filed December 4th, 1902.

Tenth. Petition for appeal and assignment of errors filed December 4th, 1902.

Eleventh. Order allowing appeal filed December 4th, 1902.

Twelfth. Notice of application for allowance of appeal together with proof of service, filed December 4th, 1902.

Thirteenth. Cost bond filed December 10, 1902.

Fourteenth. Citation and proof of service.

You will also please include in said transcripts all entries of any other pleadings, proceedings and papers on your appearance docket in the matter of the petition of Samuel Hunt, etc., as aforesaid, and certify to that effect; said transcript to be prepared as required by law and the rules of this court and of the Supreme Court of the United States, before the ninth day of January, 1903.

SPIEGELBERG & WISE,
Solicitors for Appellants.

Dated Dec. 10th, 1902.

(Endorsement:) United States circuit court. Northern district of Ohio, western division. Continental Trust Company against Toledo, St. Louis & Kansas City Railroad Co. *et al.* In the matter of the petition of Samuel Hunt, as receiver, &c. Præcipe. Spiegelberg & Wise solicitors for J. S. Bache, 44 Broad street, New York. Filed. Dec. 10, 1902. Irvin Belford, clerk.

170 United States Circuit Court, Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE City of New York *et al.*
vs.
TOLEDO, ST. LOUIS AND KANSAS CITY Railroad Company *et al.*
No. 1205. In Equity.

In the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis and Kansas City Railroad Company, filed in the office of the clerk of this court on the 28th day of May, 1900.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States for said district, do hereby certify that the annexed and foregoing pages contain a full and true copy of so much of the original pleadings, records, papers, exhibits and other proceedings in the above-entitled cause as I am requested by counsel to include therein, as shown by the præcipe filed in the said case, a copy of which is hereto attached, and which I am advised are necessary to the hearing in the Supreme Court of the United States. I further certify that the foregoing transcript contains all the papers which appear noted on the appearance docket in the above-entitled cause in the matter of the petition of Samuel Hunt, as receiver, etc.; I do further certify that there is attached to and transmitted therewith a copy of the opinion of the court filed in the therein-entitled matter, and the citation issued therein.

In testimony whereof, I have hereunto signed my name and affixed the seal of the said court at Toledo, in said district, on this 19th day of December, A. D. 1902, and of the 127th year of the Independence of the United States of America.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

IRVIN BELFORD, *Clerk*,
By J. W. WILSON,
Deputy Clerk.

Endorsed on cover: File No. 18,765. N. Ohio C. C. U. S. Term No. 537. Jules S. Bache, appellant, *vs.* Samuel Hunt, as receiver of the St. Louis, Toledo and Kansas City Railroad Company & Toledo, St. Louis & Western Railroad Company. Filed December 29, 1902.

a

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 177.

JULES S. BACHE, APPELLANT,

vs.

SAMUEL HUNT, AS RECEIVER, ET AL.

WRIT OF CERTIORARI AND RETURN THERETO.

FILED FEBRUARY 1, 1904.

1 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the northern district of Ohio, Greeting:

[Seal of the Supreme Court of the United States.]

Whereas, in a certain suit in said circuit court between Continental Trust Company of the City of New York, survivor of John M. Butler, and Toledo, St. Louis & Kansas City Railroad Company *et al.*, in the matter of the petition of Samuel Hunt, as receiver of the Toledo, St. Louis & Kansas City Railroad Company, No. 1205, in equity, which suit was removed to the Supreme Court of the United States by virtue of an appeal taken by Jules S. Bache, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

2 "That a certain decree of foreclosure and sale entered in the said circuit court in the suit of The Continental Trust

Company of the City of New York against The Toledo, St. Louis and Kansas City Railroad Company and others, on the first day of April, 1898, and a certain order of confirmation of sale entered in the said circuit court, in said cause, on the 18th day of April, 1900, are omitted from said record."

You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find, to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of January A. D. 1904.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

3 UNITED STATES OF AMERICA, }
Northern District of Ohio. }

In pursuance of the command of the within writ of certiorari, I, Irvin Belford, clerk of the circuit court of the United States, within and for the northern district of Ohio, do herewith transmit, under the seal of said court, a full and complete copy of a certain decree of foreclosure and sale entered in the said circuit court in the suit of The Continental Trust Company of the City of New York against The Toledo, St. Louis and Kansas City Railroad Company and others, on the first day of April, 1898, and a certain order of confirmation of sale entered in the said circuit court, in said cause, on the 18th day of April, 1900, and omitted from the record of said cause now pending on appeal in the Supreme Court of the United States, and which by the command of said writ were ordered to be returned.

In testimony whereof, I have affixed my signature as clerk of said court and the seal thereof, at Toledo, in said district, this 29th day of January, A. D. 1904, and in the 128th year of the Independence of the United States of America.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

IRVIN BELFORD,
Clerk of the Circuit Court of the United States for the Northern District of Ohio.

4 United States Circuit Court, Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE CITY of New York *et al.*
vs.
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company *et al.*
} No. 1205. In Equity.

In the Matter of the Petition of SAMUEL HUNT, as Receiver of the Toledo, St. Louis and Kansas City Railroad Company.

Record of the decree of foreclosure and sale entered in the said circuit court, in the suit of the Continental Trust Company of the City of New York against the Toledo, St. Louis and Kansas City Railroad Company and others, on the first day of April, 1898, and a certain order of confirmation of sale entered in the said circuit court, in said cause, on the 18th day of April, 1900.

5 December Term, A. D. 1897, to wit, April 1st, 1898.

Present: Honorable William H. Taft, circuit judge.

CONTINENTAL TRUST COMPANY OF THE CITY of New York, Survivor of John M. Butler,
against
TOLEDO, ST. LOUIS AND KANSAS CITY RAILroad Company, Joseph S. Stout, Randolph F. Purdy, Ferdinand E. Canda, Charles T. Harbeck, Jules S. Bache, Oliver & Roberts Wire Company, George B. Cass, Oliver Adams, Charles Hamlin, Hannibal E. Hamlin, Frank Hamlin, Ellen V. Hamlin.
} In Equity. No. 1205.

CHARLES HAMLIN, HANNIBAL E. HAMLIN, Frank Hamlin, and Ellen V. Hamlin, Cross-complainants,
against
CONTINENTAL TRUST COMPANY OF THE CITY of New York, Toledo, St. Louis and Kansas City Railroad Company, Cross-respondents.
} Cross-bill.

6 Now, on this fifteenth day of January, 1898, this cause came on to be heard upon the bill of complaint of the Continental Trust Company of the City of New York and John M. Butler, filed

on the 13th day of December, 1893, and upon the answers thereto of the respective respondents, and upon the replications to said answers filed by said complainants, and upon the answer and cross-bill of Charles Hamlin and others, filed on the 15th day of October, 1895, the replication of said answer of said cross-complainants, the answer of the complainant Continental Trust Company of the City of New York to said cross-bill, and the replication thereto, and upon the proofs taken under the issues raised by said pleadings and on all proceedings under said bill and cross-bill; and this cause also coming on to be heard on the amended intervening petition of Ferdinand E. Canda, Jules S. Bache, the Contracting and Building Company of Kentucky, the Rhode Island Locomotive Works, the Rhode Island National Bank and the Signal Oil Works, Limited, filed October 28, 1897, and the answer thereto of said trust company, the surviving complainant, and on the proofs taken under said amended intervening petition and said answer.

This cause having been argued by counsel, the court, being fully advised in the premises, finds and decrees as follows:

First. All the material allegations of said bill of complaint of the Continental Trust Company of the City of New York and John M. Butler are true.

Second. At all the times in said bill of complaint mentioned, the respondent The Toledo, St. Louis and Kansas City Railroad Company was, and it now is, a corporation duly organized and existing under and by virtue of the laws and consolidation statutes of the several States of Ohio, Indiana and Illinois, and owned and operated a line of railroad, extending from Toledo, in the State of
7 Ohio, through the States of Ohio, Indiana and Illinois, to the city of East St. Louis, in the county of St. Clair, in said State of Illinois.

Third. In the exercise of the powers possessed by it under the laws of the said States of Ohio, Indiana and Illinois, and in pursuance of proper corporate action to that end, said respondent Toledo, St. Louis and Kansas City Railroad Company, on or about the 19th day of June, 1886, in accordance with resolutions passed by its board of directors and by its stockholders, at respective meetings thereof, duly called, duly made and executed under its corporate seal, attested by the signatures of its president and secretary, its 9,800 bonds bearing date the nineteenth day of June, 1886, and by the terms of each thereof, said respondent railroad company promised to pay to the bearer, at the agency of said respondent railroad company in the city of New York, the sum of one thousand dollars in gold coin of the United States of the then present standard of weight and fineness, on the first day of June, 1916, and to pay interest on said principal sum semi-annually, at its agency in the city of New York, in like gold coin, at the rate of six per cent. per annum, from the first day of June, 1886, on the first days of June and December in each year, until the payment of said principal sum, on presentation and surrender of coupons for such interest

annexed to said bonds, as said coupons should severally become due.

To secure the payment of said bonds and the coupons thereto attached, according to the tenor and effect of said bonds and coupons, said respondent railroad company, on or about said 19th day of June, 1886, in pursuance of proper resolutions of its board of directors and of its stockholders, duly executed, acknowledged and delivered to the American Loan and Trust Company, a corporation duly organized and existing under and by virtue of the laws
8 of the State of New York, and Joseph E. McDonald, of the city of Indianapolis, in the State of Indiana, its certain indenture of mortgage or deed of trust, a copy whereof is annexed to said bill of complaint of said Continental Trust Company of the City of New York and John M. Butler, commonly known and hereinafter called the first mortgage of said respondent railroad company, and thereby conveyed to said American Loan and Trust Company and said Joseph E. McDonald, upon the trusts therein set forth the lines of railroad, equipment, franchises and property in said first mortgage and in said bill of complaint particularly described.

Said first mortgage was forthwith duly recorded in the offices of the recorders and clerks of the various counties through which said mortgaged railroad ran and in which said mortgaged property was situated.

Fourth. Said first mortgage is a valid and subsisting lien upon the following railroads, property and franchises, to wit, the line of railroad of said mortgagor, commencing in the city of Toledo, at or near the business centre thereof, in the county of Lucas, in the State of Ohio, and running thence through said State of Ohio, the State of Indiana and the State of Illinois, to the city of East St. Louis, in the county of St. Clair, in said State of Illinois, a distance of about four hundred and fifty miles; all other railroads and interests in railroads owned by said respondent railroad company at the date of the execution of said first mortgage, or at any time thereafter by it acquired or held in trust for it or for its benefit; all lands, roadways, tracks, superstructures, rails, sidings, turn-outs, bridges, piers, wharves, viaducts, culverts, walls, fences, ways and rights of way, depots, station houses, engine houses, car houses, freight houses, warehouses, elevators, docks, buildings, repair shops, machines shops, depot grounds and
9 lands, sidings, all buildings, all structures, all erections and all improvements owned by said respondent railroad company, at the date of the execution of said first mortgage, or at any time thereafter by it acquired or held in trust for it or for its benefit; all leases and leasehold interests, contracts, choses in action, including bills receivable, traffic balances and claims of every character, and all books of account or of record and all minute books, documents and papers owned by said respondent railroad company at the date of the execution of said first mortgage or which it has since at any time acquired; all easements and privileges, including

all rights of way granted by cities and towns through and along streets, squares, avenues, alleys, and public grounds, and all terminal facilities property, rights and structures of every description held or owned by said railroad company at the date of the execution of said first mortgage or to which it was then entitled, or which it has since acquired, or to which it has since become entitled, or held in trust for it, or for its benefit; including all terminal facilities, all property and privileges of every kind, and nature, and all rights of way and franchises that belonged to the Toledo, Delphos and Burlington Railroad Company, and to the companies that consolidated with the said Toledo, Delphos and Burlington Railroad Company, and all the property, rights of way, terminal facilities and privileges that belonged to the Toledo, Cincinnati and St. Louis Railroad Company, including all companies that by consolidation formed said last mentioned company in the said line of railroad running from Toledo, Ohio, to East St. Louis, Illinois, and all rights and privileges thereunto appertaining; and all property, terminal facilities, rights and privileges of every kind and nature that belonged to the Toledo, Charleston and St. Louis Railroad Company, of Illinois; and all property, terminal facilities, rights and privileges of every kind and nature that belonged to the Bluffton, Kokomo and South-western Railroad Company, of Indiana; and all property, terminal facilities, rights and privileges of every kind and nature that belonged to the Toledo, Dupont and Western Railway Company, of Ohio; and all property, terminal facilities, rights and privileges of every kind and nature that belonged to and became vested in Sylvester H. Kneeland, the purchaser thereof, at judicial sale, on the thirtieth day of December, A. D. 1885, at the city of Indianapolis, Indiana; all locomotives, tenders, passenger cars, baggage cars, freight cars and other cars, and all other rolling stock and equipment of every character and description, and all interests in rolling stock and equipment, at the date of the execution of said first mortgage owned or possessed by said Toledo, St. Louis and Kansas City Railroad Company, or held in trust for it or for its benefit, or which it, at any time or times, since, has acquired, or to which it has become entitled, or which may have been or may be held in trust for it or for its benefit; all machinery, tools and implements, rails, fastenings and spikes, materials and supplies owned by said railroad company at the date of the execution of said first mortgage, or by it at any time thereafter acquired; all rights, privileges and franchises which said Toledo, St. Louis and Kansas City Railroad Company at the date of the execution of said first mortgage held, possessed, or was entitled to, and also all rights, privileges and franchises which said railroad company has acquired or become possessed of or entitled to, for, or in respect of, or for the uses or purposes of its said lines of railroad or the operation or maintenance of the same, or any part thereof, and all other property, rights to property or interests in property of whatever description owned by the

respondent railroad company at the date of the execution of its said first mortgage or thereafter at any time by it acquired, or held in trust for it for its benefit, in extension of, or appurtenant, or incidental to the railroad and property above described, or described in and covered by said first mortgage; and also all materials
11 and supplies, all equipment and rolling stock and all interests therein, and all other property, real, personal and mixed, and interests in property, and all choses in action, at any time prior to the delivery to the purchasers of the property sold under this decree acquired by any receiver in this cause, or becoming vested in any receiver in this cause, or held in trust for him or for his benefit, and all moneys, profits and income derived, or at any time hereafter to be derived, by any receiver in this cause from the operation of the property herein adjudged to be subject to said first mortgage.

Fifth. Thereafter, and on and subsequent to said 19th day of June, 1886, said respondent railroad company issued and delivered its said first mortgage bonds to the amount of $9,000,000, with the coupons thereto attached, and duly certified by said American Loan and Trust Company, one of said trustees under said first mortgage securing the same. All said first mortgage bonds so issued are now outstanding in the hands of divers persons and corporations, who are owners and holders thereof for value.

Sixth. Said Joseph E. McDonald, one of the trustees named in said first mortgage of said Toledo, St. Louis and Kansas City Railroad Company, died after the execution and delivery of said first mortgage, and said American Loan and Trust Company, the other trustee named in said first mortgage, became insolvent after the execution and delivery thereof, and thereafter, in pursuance of the laws of the State of New York, was dissolved.

Under and in pursuance of the provisions of said first mortgage, the complainant Continental Trust Company of the City of New York, a corporation organized and existing under the laws of the State of New York, and the complainant John M. Butler had, prior to the time of filing their said bill, been duly appointed trus-
12 tees under said first mortgage and had respectively accepted said trust, and were, at the time of filing their said bill, the trustees under said first mortgage, and vested with all the estates, trusts, powers and duties of the original trustees under said first mortgage. Said Butler has since died and said trust company is now sole trustee under said mortgage.

Seventh. On or about the 18th day of May, 1893, the respondents, Joseph S. Stout and Randolph F. Purdy, severally of the city, county and State of New York, and citizens of said State of New York, filed their bill in this court against said Toledo, St. Louis and Kansas City Railroad Company, alleging its insolvency and praying for the appointment of receivers of its property. Thereupon, and on or about said day, by order of this court, Samuel R. Callaway was ap-

pointed receiver of said Toledo, St. Louis and Kansas City Railroad Company, and all its property wherever situated, and was thereby authorized, empowered and instructed, among other things, to enter upon and take possession of all such property, and to manage, control and operate the same; thereafter in an action of similar character, instituted in the circuit court of the United States for the district of Indiana by said complainants against said respondent, a similar order was made by said court, and thereafter, in an action of similar character, instituted in the circuit court of the United States for the southern district of Illinois by said complainant against said respondent, a similar order was made by said court. Said Samuel R. Callaway, appointed receiver as aforesaid, thereafter, and on or about the 22d day of May, 1893, duly qualified as such receiver and as such receiver entered upon and took possession of the railroad and property of said respondent Toledo, St. Louis and Kansas City Railroad Company, being the same property embraced in said first mortgage of said railroad company, and used and
13 operated the same; and said mortgaged railroad and property was, at the time of the filing of their bill of complaint by said Continental Trust Company of the City of New York and John M. Butler, operated by the said Samuel R. Callaway, as receiver as aforesaid, and was in the possession of said circuit court of the United States for the northern district of Ohio, for the district of Indiana and for the southern district of Illinois.

Eighth. Said Toledo, St. Louis and Kansas City Railroad Company failed to pay the interest on its said bonds secured by its said first mortgage, which accrued and became due and payable on the first day of June, 1893, and the coupons for such interest which matured on said day, although payment of said interest and of said coupons was duly demanded as said interest became due and said coupons matured.

Said respondent railroad company also failed to pay the installment of interest on its first mortgage bonds secured by said first mortgage, which became due and payable on the 1st day of December, 1893. Default in the payment of said interest maturing June 1, 1893, in respect of all said bonds, continued for the space of more than six months, and on about December 4, 1893, in pursuance of the powers conferred by said mortgage, the holders of one-half part of said bonds outstanding, elected and declared the whole of said first mortgage bonds to be due and payable.

Ninth. The principal of all said bonds is now due and payable, and there is due and owing in respect of said first mortgage bonds, at the date of the entry of this decree, the principal thereof, $9,000,000, and for the interest thereon, the following amounts:

	Interest maturing June 1, 1893.....	$270,000
	Interest thereon to the date of this decree.....	78,300
	Interest maturing December 1, 1893.....	270.000
14	Interest thereon to the date of this decree.....	70,200
	Interest on said principal sum from December 1, 1893, to the date of this decree.....	2,340,000
	Amounting in the aggregate to the sum of.....	$12,028,500

Tenth. Said line of railroad covered by said first mortgage constitutes and forms one railroad system, and with all said equipment, franchises and appurtenances has hitherto been owned and operated as an entirety, and it is for the interest of the mortgagor and its creditors and of all parties that it should be sold as an entirety. The value of it in portions and sections is and will be much less than its value as a whole, and said mortgaged premises are so situated that the same cannot be sold in separate parcels without great and irreparable loss and sacrifice.

It is therefore considered, ordered and decreed as follows:

I. Said first mortgage of the respondent railroad company is a valid lien upon the railroad equipment and other property and franchises described therein as aforesaid, and as hereinabove found and decreed, to secure said bonds and coupons issued thereunder, and the amount hereinabove found and decreed to be due thereon, to wit, said sum of $12,028,500, with interest from the date of this decree.

II. The respondent, The Toledo, St. Louis and Kansas City Railroad Company do pay or cause to be paid within sixty days after the entry of this decree, to the complainant, Continental Trust Company, of the City of New York, for the use and benefit of the holders of said outstanding first mortgage bonds and coupons, the
15 amount hereinbefore found to be due in respect thereof, namely the sum of twelve million and twenty-eight thousand five hundred dollars ($12,028,500) with interest thereon from the date of this decree to the date of payment, and, in addition thereto, do pay into this court, such sums of money as may be required by the court in order to pay and satisfy all costs and expenses of this action, including the payment of all outstanding obligations of the receiver in this cause, the proper compensation of the receiver in this cause, and all expenses of such receivership and also such expenses and compensation of the trustee and its counsel as may be approved and allowed by the court. If such payment shall be made, any of the parties hereto may apply to this court for such further directions as may be just and equitable.

III. In default of such payment by the respondent railroad company, or some one claiming under it, or by any one for its account, within the time directed as aforesaid, the railroad, equipment, franchises and property herein, adjudged to be subject to said first mortgage and hereinabove described, shall be sold as an entirety, in one

lot or parcel, as hereinafter directed, and all the right, title, estate, interest and equity of redemption of said respondent railroad company and of the complainant, Continental Trust Company, of the City of New York, as trustee under said first mortgage, and of all other parties to this action and of all persons claiming under them or any of them of, in or to said property and every part and parcel thereof, shall be forever barred and foreclosed.

IV. Such sale shall be made without valuation, appraisement, redemption or extension, and shall be made by and under the direction of Hiram D. Peck, of Cincinnati, and William A. Van Buren, of Indianapolis, who are hereby appointed special masters
16 for that purpose, and who are directed to make and conduct said sale, and to execute a deed or deeds of conveyance of the property sold, to the purchaser or purchasers thereof, upon an order confirming such sale and upon payment or settlement of the purchase price bid as hereinafter provided. Said sale shall be made at public auction to the highest bidder, at the terminal freight station of the respondent railroad company on Erie street in the city of Toledo, in the State of Ohio, on the property to be sold, on a day and at an hour to be fixed by said special masters, at the request of the solicitors for the complainant or upon further order of the court, and notice of the time, place and terms of said sale, describing briefly the property to be sold and referring to this decree, shall be published at least once a week for six successive weeks preceding the date of such sale, in at least one newspaper in each of the following places, to wit, the city of Toledo in the State of Ohio, the city of Frankfort in the State of Indiana, the city of East St. Louis in the State of Illinois, and the city of New York in the State of New York. The special masters may, at the request of the complainant's solicitors, adjourn or postpone said sale and may, without further notice, proceed with the sale on any day to which the same may thus have been adjourned, or they may give such further notice of sale in addition to the notice above described or of any adjournment thereof, as the complainant's solicitors may request.

V. The special masters shall receive no bid from any one offering to bid who shall not first deposit with him, as a pledge that he will make good his bid in case of its acceptance, the sum of twenty-five thousand dollars ($25,000) in a certified check on some national bank or incorporated trust company made payable to the order of the clerk of this court. The deposit so received from any unsuccessful bidder shall be returned to him when the property shall
17 be struck down. The deposit so received from any successful bidder shall be at once deposited in the registry of this court and shall be applied on account of the purchase price of the property. The special masters shall accept no bid for said mortgaged property less than the sum of $7,500,000 for the entire road and for the Ohio part thereof an amount proportioned to said sum on a mileage basis, and unless such sum shall be bid, the special masters shall adjourn the sale and apply to the court for further instructions. Upon

the acceptance of any bid, the purchaser shall forthwith pay to the special masters the sum of $75,000 in a certified check on any national bank or any trust company payable to the order of the clerk of this court. Any cash or check which may have previously been deposited by the successful bidder as a pledge that he will make good his bid shall be received on account of the amount so payable by him on the acceptance of his bid. All sums of money received by the special masters on any accepted bid shall be forthwith deposited in the registry of the court. In case any bidder shall fail to make good his bid upon its acceptance by the special masters, or shall fail after such acceptance to comply with any order of the court relating to the payment thereof or the consummation of the purchase, then the sums deposited by such purchaser or purchasers as hereinbefore provided shall be forfeited as a penalty for such failure, and shall be applied to the payment of the expenses of the resale, and toward making good any deficiency or loss in case the property shall be sold at a less price on such resale. If such sale shall not be confirmed by the court, such deposit shall be returned to the bidder. The purchaser shall, on the confirmation of the sale by the court, make such further payment or payments in cash on account of the purchase price, as the court may from time to time direct. So much of the purchase price as may not be required by the court to be paid in cash may either be paid in cash or the purchaser may satisfy
18 and make good such residue of his bid in whole or in part by turning in to be canceled or credited, as hereinafter provided, the first mortgage bonds and coupons to be paid out of the proceeds of the sale upon distribution thereof as hereinafter set forth, and said purchaser shall be credited therefor on account of the purchase price such sums in cash as would be payable in respect of such bonds and coupons out of the proceeds of sale if the whole amount of the purchase price were payable in cash. The court reserves the right to resell the property upon such notice as the court may direct, in case the purchaser shall fail or omit to make any payment on account of the unpaid balance of the purchase price within thirty days after the entry of the order requiring such payment. All sums of money and all bonds and coupons received by the special masters shall be forthwith deposited in the registry of this court. The purchaser or purchasers, his or their successors or assigns, shall not be bound to inquire or see to the application of the purchase money. The complainant, Continental Trust Company of the City of New York, or any holder or holders of any of said first mortgage bonds, may bid and purchase at said sale.

The purchaser or purchasers, his or their successors and assigns, shall have the right to enter his or their appearance in this court, and he or they, or any of the parties to this suit, shall have the right to contest any claim, demand or allowance existing at the time of the sale and then undetermined, and any claim or demand which thereafter may arise or be presented which would be payable by such purchaser or purchasers, his or their successors or assigns,

or which would be payable out of the purchase price, and he or they may appeal from any decision relating to any such claim, demand or allowance.

19 VI. The funds arising from the sale of the said mortgaged premises shall be applied as follows:

(1.) To the payment of the costs of this cause and of all proper expenses attendant upon said sale or sales, including the compensation of the special masters appointed to make the sale, which, exclusive of his necessary expenses, shall not exceed $1,250 to each special master, and the payment of all charges, compensations, allowances and disbursements of the complainant, The Continental Trust Company of the City of New York, and its solicitors and counsel, and of the said John M. Butler, the deceased complainant, and of the receiver, and also all other proper allowances, compensation and disbursements. All of the payments to be made under this subdivision shall be hereafter fixed and allowed and taxed by this court.

(2.) To the payment of any receiver's certificates and liabilities issued or incurred under the order of this court, and then outstanding, together with the interest accrued thereon to the date of payment.

(3.) To the payment, so far as the same shall not theretofore have been paid by the receiver in this cause, of the following amounts found by decrees of the circuit court of the United States for the district of Indiana, entered August 14, 1893, and September 26, 1893, to be due under prior decrees of said court against S. H. Kneeland for the payment of part of the purchase price bid by said Kneeland on the foreclosure sales under decrees of said court, of the Toledo division and the St. Louis division, respectively, of the Toledo, Cincinnati and St. Louis Railroad Company, to wit, to the American Surety Company, the sum of $323,909.99 and interest thereon at the rate of six per cent. per annum from the first day of July, 1894; to the Northern National Bank of Toledo, the

20 sum of $33,310.05 and interest thereon at the said rate from the first day of January, 1898; to the State Trust Company, the sum of $52,247.30 and interest thereon at the rate aforesaid from the first day of January, 1898, and to John T. Newton, the sum of $74,625.28 and interest thereon at the rate aforesaid from the first day of January, 1898.

(4.) To the payment of any claims to recover which intervening petitions have been filed and are now pending herein, and in which it shall be adjudged by this court that the same are prior in lien to said first mortgage of said respondent railroad company.

(5.) Any residue of the fund realized from said sale shall be applied to the payment of the principal of said first mortgage bonds and the interest and coupons thereon, with interest from the date of this decree to the date of payment. Any coupons upon said first mortgage bonds maturing prior to June 1, 1893, the validity of which may be duly established in this case, shall be entitled, with

interest thereon from the maturity thereof to the date of this decree to share *pro rata* with the bonds and coupons hereinabove adjudged to be outstanding in the proceeds of sale of the mortgaged property.

In case said residue shall be insufficient to pay said first mortgage bonds, and said coupons and interest thereon in full, then the same shall be paid *pro rata* without discrimination between the bonds and coupons, and each of said bonds presented for payment shall be stamped by the special master so as to show the amount which has been paid on such bonds and the coupons thereto attached, or, if presented by the purchaser or purchasers, the amount credited as paid thereon, and shall be returned to the holders thereof. Any detached coupons for interest on said
21 first mortgage bonds shall be stamped in such manner as to indicate that they have been partly paid.

(6.) If, after making all the foregoing payments there shall be any surplus, then the same shall be applied as the court shall thereafter order and direct.

All payments for any of the purposes aforesaid made by the purchaser shall be treated as advances, and subject to final adjustment.

When the special masters shall be prepared to pay out of the proceeds of sale the bonds or coupons to be paid as above specified they shall give notice of the time when and place where they will be prepared to make such payment, by publication at least once a week for two successive weeks in a newspaper published in the city of New York, and no holder of any claim or bond or coupon of the payment of which notice shall have been so given, who shall fail to present the same for payment at the time and place specified, shall be entitled to the payment of any interest thereon after the date out of the proceeds of the sale, and said special masters may make such payment in the city of New York and personally, or through any bank or bankers, or through the complainant, The Continental Trust Company of the City of New York.

VII. Upon confirmation of said sale and payment of the purchase price bid by the purchaser or purchasers of said property, or upon making such provision for the payment thereof as the court shall approve, the said special master making the sale shall execute a deed or deeds and other proper instruments conveying and transferring the property purchased to such purchaser or purchasers or his or their successors or assigns; and upon the execution and delivery of such deed or deeds, the grantee therein shall be let into possession of the premises and property conveyed and trans-
22 ferred and the complainant, The Continental Trust Company of the City of New York, shall thereupon be discharged of its trust in the premises, except as to the distribution of any money in its hands, and as to the entry, collection and distribution of any deficiency judgment which it may obtain, and the receiver herein, and any party to this suit having possession of the same, shall deliver

such property over to the purchaser or purchasers, his or their successors or assigns, together with any property and income theretofore acquired or received by any receiver since the commencement of this suit, in the management or operation of the mortgaged premises; subject, nevertheless, to the condition that the court may retake and resell the property conveyed, in case the purchaser or purchasers, his or their successors or assigns, shall fail within the time hereinabove limited to pay any balance of the purchase price remaining unpaid.

The purchaser or purchasers, and his or their successors and assigns, shall, after such delivery of the premises, hold, possess and enjoy the said railroad, premises and property and all the rights, privileges, immunities and franchises appertaining thereto, as fully and completely as said respondent, Toledo, St. Louis and Kansas City Railroad Company, now holds or enjoys or held or enjoyed the same at the time of the execution and delivery of said first mortgage or at any time since was or is entitled to hold or enjoy the same; and the respective purchaser or purchasers and his or their successors and assigns, shall thereupon be entitled to have and to hold the premises and property so conveyed and transferred, free and discharged from the lien and encumbrance of said first mortgage and from the claims of all other parties to this suit and those claiming under them, save only as herein expressly reserved, and save only as to such claims as may have accrued against the receiver in his operation of the road within six months prior to the entry
23 of this decree, and which are prior in right to the mortgage lien herein foreclosed, and which shall not have been presented to this court, upon intervening petition or by the receiver for allowance before the entry of the decree of confirmation and distribution herein.

VIII. The respondent, Toledo, St. Louis and Kansas City Railroad Company, shall, at the time of the execution of said deed or deeds by the special masters, as a further assurance to the purchaser or purchasers, his or their successors or assigns, execute its deed or deeds or join with said special masters in the execution of the deed or deeds to be made by them, and shall thereby convey, transfer and release to the purchaser or purchasers, his or their successors or assigns, all its right, title and interest in the property and franchises conveyed and transferred to such purchaser or purchasers by said special masters; and said Continental Trust Company of the City of New York, as trustee under said first mortgage, shall by proper deed or deeds or other instruments, transfer and release to such purchaser or purchasers all its right, title and interest under the said first mortgage, in or to the property so conveyed and transferred; and, further, the receiver in this cause shall make and deliver a good and sufficient deed or deeds, conveying and assigning to the purchaser or purchasers the right, title and interest of the receiver in or to any property vested in him or standing in his name, or to which he as such receiver, in the management or operation of

the mortgaged premises, or by use of the income or proceeds of any part thereof, or in any manner, has or shall have acquired title, or of which he shall be possessed, or to which he shall be entitled.

IX. In case the proceeds of said sale shall not be sufficient to pay, in full, the amounts hereinbefore found to be due for
24 principal and interest upon said first mortgage bonds, then the said special masters shall report to the court the amount of the deficiency or deficiencies, and the complainant, on the confirmation of said report, shall have judgment against the respondent railroad company for the amount of such deficiency, and shall have execution therefor, pursuant to the rules and practice of this court.

X. It is further ordered, adjudged and decreed, that the cross bill of said cross-complainants Charles Hamlin, Hannibal E. Hamlin, Frank Hamlin and Ellen V. Hamlin be, and the same hereby is, dismissed on the merits for want of equity as against the complainant Continental Trust Company of the City of New York, and that said complainant, Continental Trust Company of the City of New York, recover of the said Charles Hamlin, Hannibal E. Hamlin, Frank Hamlin and Ellen V. Hamlin, its costs in said cross-action, to be taxed, and that said complainant trust company have execution therefor.

XI. It is further ordered, adjudged and decreed that the amended intervening petition of Ferdinand E. Canda, Jules S. Bache, the Contracting and Building Company of Kentucky, the Rhode Island Locomotive Works, the Rhode Island National Bank, and the Signal Oil Works, Limited, be, and the same is hereby dismissed on the merits for want of equity as against the complainant Continental Trust Company of the City of New York and that the complainant Continental Trust Company of the City of New York recover from said petitioners, Ferdinand E. Canda, Jules S. Bache, the Contracting and Building Company of Kentucky, the Rhode Island Locomotive Works, the Rhode Island National Bank, and the Signal Oil Works, Limited, the costs of said complainant in said proceeding, to be taxed, and that said complainant have execution therefor.
25 Subject in all respects as hereinabove found and decreed, such dismissal shall be without prejudice to the right of the Contracting and Building Company of Kentucky to proceed under its petition filed October 31, 1893, and to the right of the Rhode Island Locomotive Works to proceed under the amended petition filed December 28, 1893.

XII. All questions not hereby disposed of, including the discharge of the receiver and the settlement of his accounts, are reserved for future adjudication, and any party to this cause may at any time apply to this court for further relief at the foot of this decree.

April 1, 1898.

WM. H. TAFT,
Circuit Judge.

26 December Term, A. D. 1899, to-wit, April 18, 1900.

Present: The Honorable A. C. Thompson, United States district judge, sitting by designation.

CONTINENTAL TRUST COMPANY OF THE CITY OF NEW York, Survivor of John M. Butler, Complainant,
vs.
TOLEDO, ST. LOUIS AND KANSAS CITY RAILROAD Company *et al.*, Respondents. } In Equity. No. 1205.

CHARLES HAMLIN ET AL., Cross-complainants,
vs.
CONTINENTAL TRUST COMPANY OF THE CITY OF NEW York, Toledo, St. Louis and Kansas City Railroad Company, Cross-respondents. } Cross-bill.

Now, on the 17th day of April, 1900, come again the parties by their respective solicitors, and come also the purchasers, Morton S. Paton and Richard B. Hartshorne, by their counsel, and the
27 motion of the complainant, Continental Trust Company of the City of New York, that the report of Frank H. Shaffer and Merrill Moores, the special masters, filed herein on the 2d day of April, 1900, should be approved and confirmed, and that the sale of the mortgaged railroad, equipment, franchises and property of the respondent, Toledo, St. Louis and Kansas City Railroad Company, should be confirmed and made absolute, came on to be heard:

And it appearing by the report of said special masters that said special masters have fully complied with the directions of the decree dated the 1st day of April, 1898, entered in this cause, and of the decree entered in this cause, dated November 11, 1899, modifying said decree of April 1, 1898, and of the decretal order entered in this cause on January 19, 1900, and of the decree entered in this cause on said January 19, 1900, re-entering and confirming said decree dated November 11, 1899, as to the sale of said railroad, equipment, franchises and property; that said railroad, equipment, franchises and property have been duly advertised, offered for sale and sold to said purchasers; that said purchasers have made the deposit and payment required by said decrees and by the terms of sale, and that said sale ought to be confirmed:

It is therefore ordered, adjudged and decreed that the said report of said special masters be, and the same hereby is, in all things approved and confirmed, and that said sale to said Morton S. Paton and Richard B. Hartshorne, as joint tenants and not as tenants in common, as an entirety, without valuation, appraisement, redemption or extension, of all and singular the railroad, equipment, franchises and property of the respondent, Toledo, St. Louis and Kansas City Railroad Company, described in and by said decree entered

in this cause, and dated the 1st day of April, 1898, and, by said decree, adjudged to be subject to the lien of the first mortgage of said respondent railroad company, at and for the sum of
28 twelve million two hundred thousand dollars by them bid, be, and the same hereby is, in all things ratified, approved, confirmed and made absolute.

And the said purchasers having deposited with the complainant, Continental Trust Company of the City of New York, for the purpose of paying, satisfying and making good the bid of such purchasers for said mortgaged railroad, equipment, franchises and property, first mortgage bonds of said respondent, Toledo, St. Louis and Kansas City Railroad Company issued under said first mortgage of said respondent railroad company, dated June 19, 1886, to the amount at par of $8,814,000, bearing the coupon maturing June 1, 1893, and all subsequent coupons, and producing the certificate or certificates of said trust company that it so holds the same subject to the order of said special masters, it is

Ordered, adjudged and decreed, that such provision for the payment of the residue of said bid of said purchasers, is satisfactory to this court, and is hereby approved by this court.

It is further ordered, adjudged and decreed, that upon the delivery by said purchasers to said special masters of said certificate or certificates of deposit of said trust company, the special masters sign, seal, execute, acknowledge and deliver a deed or deeds of conveyance to said purchasers, as joint tenants and not as tenants in common, or to the persons or corporations to whom they may assign their rights, of all and singular the railroad, equipment, franchises and property so sold as aforesaid; that the respondent, Toledo, St. Louis and Kansas City Railroad Company, the complainant, Continental Trust Company of the City of New York, as surviving trustee under said first mortgage of said Toledo, St. Louis and Kansas City Railroad Company, and the receiver in this cause, respectively,
29 and all other parties to this cause, join in said deed or deeds of said special masters, or execute and deliver separate conveyances of the property embraced therein on demand of said purchasers, their successors or their assigns, and that, in default of such deed or deeds by any of the parties hereto, this decree shall have the force and effect of such deed or deeds, conveying all its, their or his interest in said railroad, equipment, franchises and property so sold as aforesaid; that said purchasers shall have the right to assign their interest as an entirety or in parcels, as said purchasers may determine; that, upon filing such assignments with said special masters, said special masters and said parties shall make their deed or deeds of conveyance accordingly; and that, in the event of any assignment by said purchasers of their said bid or interest, or any conveyance by them of said railroad, equipment, franchises and property, all obligations incurred by said purchasers on account of the purchase of said railroad, equipment, franchises and property, may be transferred to and assumed by such transferee or transferees, grantee or

grantees, and thereupon said purchasers shall individually be discharged from all such obligations and liability.

It is further ordered and decreed, that upon the delivery to said purchasers or to their successors or their assigns of said deed or deeds of conveyance to be made by said special masters, the grantee or grantees therein shall fully possess and be invested with said railroad, equipment, franchises and property so sold and so conveyed, as the absolute owners thereof; that on the exhibition to him of said deed or deeds the receiver of this court, who, until such exhibition thereof to him, shall continue as heretofore, the operation of the mortgaged premises, is authorized and directed, and is required, to let said grantee or grantees into possession of the premises conveyed;

30 that the receiver, or any party to this cause having possession of the same, deliver to said grantee or grantees all property embraced in said special master's deed or deeds, together with and including any property and income in the hands of the receiver at any time acquired or received by him in the management of the mortgaged premises down to the time of such delivery of possession, subject, nevertheless, as hereinafter set forth, and that said purchasers, their successors or their assigns, on receiving said conveyance or conveyances, shall be, and are hereby, subrogated to all and singular, the rights of all parties to this action with respect to the railroad, equipment, franchises and property sold as aforesaid, with the right to prosecute and defend all issues in this suit and all suits, actions and proceedings involving the same, whether in the name of any of the parties hereto, or of said receiver, or otherwise, including the right to prosecute proceedings in error or on appeal.

It is further ordered and decreed, that said first mortgage bonds and coupons deposited with the complainant Continental Trust Company of the City of New York, and forming the subject of its certificates of deposit which may be delivered to said special masters, remain on deposit with said complainant trust company to abide the further order of the court herein.

It is further ordered and decreed that, upon making, in accordance with said decree of April 1, 1898, payment of the amounts by said decree directed to be paid in priority to the first mortgage bonds and the interest thereon, any residue of the fund realized from said sale shall be applied, in accordance with said decree and as therein directed, toward the payment of the amount by said decree adjudged to be due at the date thereof, in respect of said first mortgage bonds, to wit, the sum of $12,028,500, with interest on said amount from the date of said decree to the date of payment;

31 that the distribution of the proceeds of sale and all allowances and compensation are reserved for future order, and that the delivery of said deed or deeds of conveyance and of the possession of said railroad, equipment, franchises and property, sold as aforesaid, shall be subject to the right of the court to require such further payment or payments to be made in cash on account of said purchase price bid, in order to meet claims which, under

said decree, are or may become payable out of the proceeds of sale in priority to the said amount due on said first mortgage bonds, as the court may from time to time direct, and the court reserves the right in case such purchasers, their successors or their assigns, shall fail or neglect to make any payment in cash on account of any unpaid balance of the purchase price bid within thirty days after the entry of an order requiring such payment and service of a copy of said order upon said purchasers, their successors or their assigns, to retake and resell the mortgaged railroad, equipment, franchises and property, and jurisdiction of this cause is retained for that purpose.

32 United States Circuit Court, Northern District of Ohio, Western Division.

CONTINENTAL TRUST COMPANY OF THE City of New York *et al.*
vs.
TOLEDO, ST. LOUIS AND KANSAS CITY Railroad Company *et al.*
} No. 1205. In Equity.

In the Matter of the Petition of SAMUEL HUNT, as Receiver of the Toledo, St. Louis and Kansas City Railroad Company.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States for said district, do hereby certify that the annexed and foregoing pages contain a full and true copy of a certain decree of foreclosure and sale entered in the said circuit court in the suit of The Continental Trust Company of the City of New York against The Toledo, St. Louis and Kansas City Railroad Company and others, on the first day of April, 1898, and a certain order of confirmation of sale entered in the said circuit court, in said cause, on the 18th day of April, 1900, as referred to in the attached and foregoing writ of certiorari issued herein.

In testimony whereof, I have hereunto signed my name and affixed the seal of the said court at Toledo, in said district, on this 29th day of January, A. D. 1904, and of the 128th year of the Independence of the United States of America.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

IRVIN BELFORD, *Clerk.*

33 [Endorsed:] File No. 18,765. Supreme Court U. S., October term, 1903. Term No. 177. Jules S. Bache, app't, *vs.* Sam'l Hunt, as rec'r. Writ of certiorari & return. Filed February 1, 1904.

FILE COPY.

FILED
MAR 21 1904
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 177.

JULES S. BACHE, APPELLANT,

vs.

SAMUEL HUNT, AS RECEIVER, ET AL.

STIPULATION AS TO CERTAIN FACTS WHICH ARE TO BE CONSIDERED PART OF RECORD.

F. SPIEGELBERG,
Counsel for Appellant.
ADRIAN H. JOLINE,
Counsel for Appellees.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10135

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 177.

JULES S. BACHE, APPELLANT,

against

SAMUEL HUNT, AS RECEIVER OF THE TOLEDO, ST. LOUIS AND KANSAS CITY RAILROAD COMPANY, AND THE TOLEDO, ST. LOUIS AND WESTERN RAILROAD COMPANY, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

STIPULATION.

It is hereby stipulated between the parties as follows:

1. On May 18, 1893, Joseph S. Stout and another filed a judgment creditors' bill against the Toledo, St. Louis and Kansas City Railroad Company in the circuit court of the United States for the northern district of Ohio, western division, in which case a receiver was duly appointed. On May 19, 1893, Jules S. Bache, the appellant, recovered in

the supreme court of the State of New York, in and for the county of New York, a judgment against Sylvester H. Kneeland and the Toledo, St. Louis and Kansas City Railroad Company for $72,005.65, and thereafter said Bache brought an action in the court of common pleas of the State of Ohio in and for Lucas county on said judgment obtained in New York and recovered in said court of common pleas for Lucas county against said Toledo, St. Louis and Kansas City Railroad Company a judgment for $72,449.67, with interest from June 26, 1893.

2. On or about December 13, 1893, the Continental Trust Company of the City of New York and John M. Butler, complainants, filed their bill in the circuit court of the United States for the northern district of Ohio, western division, against the Toledo, St. Louis and Kansas City Railroad Company, Samuel R. Callaway, as receiver of said railroad company; Joseph S. Stout and Randolph F. Purdy, Ferdinand E. Canda, Charles T. Harbeck, Jules S. Bache, Oliver & Roberts Wire Company, George B. Cass, and Oliver Adams to foreclose a certain mortgage made by said railroad company to the said Continental Trust Company of the City of New York and John M. Butler, as trustees, dated June 1, 1886. On the 13th of December, 1893, the said circuit court of the United States for the northern district of Ohio, western division, duly made an order consolidating the suit of the said Stout and others and the suit of the said Continental Trust Company of the City of New York and John M. Butler under the name of "The Continental Trust Company of the City of New York and John M. Butler against Toledo, St. Louis and Kansas City Railroad Company *et al.*," and extended the receivership in the said suit of Stout to the said consolidated cause.

3. On the 24th day of February, 1894, Jules S. Bache, who was made a party defendant in said foreclosure suit as the

owner of the judgment in the said court of common pleas of Lucas county, Ohio, heretofore mentioned, entered his appearance as a defendant in said consolidated suit, and on the 5th day of April, 1894, he filed his separate answer to the bill of complaint, setting up his claim upon the said last-mentioned judgment.

4. On the 19th day of July, 1894, Jules S. Bache recovered in the supreme court of the State of New York, in and for the city and county of New York, a judgment against Sylvester H. Kneeland and the Toledo, St. Louis and Kansas City Railroad Company for $43,278.64.

5. On the 15th day of October, 1897, an order of said circuit court of the United States for the northern district of Ohio, western division, was made in said consolidated cause appointing Irvin Belford special master to give thirty days' public notice by advertisement, according to the course and practice of said court, to all creditors of the Toledo, St. Louis and Kansas City Railroad Company, requiring them, on or before a certain date in said order appointed, to file before him, under the said creditors' bill filed by Joseph S. Stout and another, full and itemized statements of their respective claims against such corporation, duly verified, and notifying all persons interested that all creditors failing to comply with said notice or to prove their claims within said time in said order limited would be excluded from any decree or distribution under said creditors' bill. In pursuance of said advertisement Jules S. Bache filed before said Irvin Belford verified statements of his claims, consisting of the two judgments obtained by him in the supreme court of the State of New York hereinbefore mentioned.

It is stipulated that the foregoing facts may be held and considered in all respects as if the same had been fully set forth in the record upon this appeal; but nothing herein

contained shall be considered a waiver by the appellant of his objection that the foregoing facts or some of them do not appear or are not referred to in the petition of Samuel Hunt, receiver, filed May 28, 1900.

Dated March 18, 1904.

ADRIAN H. JOLINE,
Of Counsel for Appellees.
F. SPIEGELBERG,
Of Counsel for Appellant.

[Endorsed:] United States Supreme Court, October term, 1903. No. 177. Jules S. Bache, appellant, against Samuel Hunt, as receiver, and another, appellees. (Original.) Stipulation.

[Endorsed:] File No. 18,765. Supreme Court U. S., October term, 1903. Term No. 177. Jules S. Bache, appellant, *vs.* Samuel Hunt, as receiver, &c., *et al.* Stipulation as to certain facts which are to be considered part of record. Filed M'ch 21, 1904.